

Information Packet

TITLE 318 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

New Rules for Inspection and Cleanup of Properties Contaminated by Chemicals Used in the Illegal Manufacture of a Controlled Substance at 318 IAC 1

LSA Document #06-125

Public Hearing on June 27, 2006

Indiana Government Center - South, Conference Center
Room C, 402 West Washington Street, Indianapolis, Indiana

This information packet contains the following materials for the public hearing to consider adoption of new rules at 318 IAC 1 for inspection and cleanup of properties that are contaminated by chemicals used in the illegal manufacture of a controlled substance:

- Fact Sheet
- Summary/Response to Public Comments
- Proposed Rule as Published in the Indiana Register
- IDEM's Suggested Changes to the Proposed Rule
- Estimate of Economic Impact
- Comments of the Indiana Economic Development Corporation under IC 4-22-2.1

Office of Land Quality
Rules, Planning and Outreach Section



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New Rules at 318 IAC 1 Concerning the Inspection and Cleanup of Properties Contaminated by Chemicals Used in the Illegal Manufacture of a Controlled Substance

LSA Document #06-125

Overview

This rule adds requirements to clean up property that has been contaminated by chemicals used in the illegal manufacture of a controlled substance, adds standards for listing persons who are qualified to clean up those properties, and sets standards for cleaning up contaminated properties.

Citations Affected

318 IAC 1

Affected Persons

Owners of property that has been contaminated by chemicals used in the illegal manufacture of a controlled substance and their agents. Persons who apply to be listed by IDEM as qualified to inspect and clean such property. Persons who clean up contaminated property.

Reasons for the Rule

This rule is required by IC 13-14-1-15, added by Public Law 192-2005 (SEA 444).

Economic Impact of the Rule

The economic impact of this rule cannot be meaningfully quantified at this time. Most costs to remediate properties are balanced by revenues to contractors who decontaminate these properties.

Benefits of the Rule

This rule will result in cleanup of properties contaminated by chemicals used in the illegal manufacture of a controlled substance, reduction in health risks to persons who occupy those properties, and increase in value and marketability of surrounding properties.

Description of the Rulemaking Project

This rule adds 318 IAC 1 to require persons who own property that has been contaminated by chemicals used in the illegal manufacture of a controlled substance to have that property

decontaminated before reoccupying the property or transferring an interest in that property to another person, and to establish criteria and procedures for IDEM to use to maintain a list of persons who are qualified to inspect and clean contaminated properties. The list will be available allow owners of contaminated properties to find qualified remediation contractors and inspectors who can properly clean the contaminated properties. This rule also establishes standards for cleaning up contaminated properties.

Scheduled Public Hearing

The public hearing for this rule will be held on June 27, 2006, at 1:30 p.m., in the Indiana Government Center - South, Conference Center Room C, 402 West Washington Street, Indianapolis, Indiana.

Publication History

Notice of Intent: May 1, 2006 (29 IR 2588)

Proposed Rule: June 1, 2006 (29 IR 3071)

Previous Publications on this Subject

August 1, 2005 (28 IR 3359)

January 1, 2006 (29 IR 1396)

Consistency with Federal Requirements

This rule does not conflict with any current federal regulatory program.

Rulemaking Process

The first step in the rulemaking process is a Notice of Intent published in the Indiana Register. IDEM takes comment on the rule and publishes a Proposed Rule and Notice of Public Hearing in the Indiana Register. The public hearing is held and public comments are heard. Following the public hearing, the commissioner of IDEM adopts the final rule. After adoption by the commissioner, the rule must be approved by the Indiana Attorney and the Governor. If approved, the rule becomes effective 30 days after filing with the Indiana Register.

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SUMMARY/RESPONSE TO PUBLIC COMMENTS

The Indiana Department of Environmental Management (IDEM) has received comments from the following parties:

Dwayne Caldwell, Vanderburgh County Health Department (VCHD)
Matthew J. Griggs, ACT Environmental Services, Inc. (ACT)
Aaron Trippler, American Industrial Hygiene Association (AIHA)
Andy Pyle, Industrial Solutions Group, Inc. (ISG)
Gregory G. Smith, Protechs, Inc. (PI)
Jack E. Leonard, Environmental Management Institute, Inc. (EMI)
Michael Morris, EHS Technology Group, LLC (EHS)
Andrew Charnstrom, Indiana Apartment Association (IAA)
Lynne Sullivan, Executive Director, Indiana Apartment Association (IAA)
Ronald Lucy, EES Group, Inc. (EES)
Bill Beranek, Indiana Environmental Institute, Inc. (IEI)
Dr. Lenore Tedesco, appointed member, Solid Waste Management Board (SWMB1)
Thomas Hohman, ex-officio member, Solid Waste Management Board (SWMB2)
B. Kerry Stepter, appointed member, Solid Waste Management Board (SWMB3)
Rita Hope, Indiana State Department of Health (ISDH)
David “Duke” Brown, Duke’s Earth Services, Inc. (DESI)
Daniel Gillespie, Applied Research and Development Laboratories (ARDL)
Markus Jones, Keramida Environmental, Inc. (KER)
Bruce Oertel, IDEM Office of Land Quality (OER)
Sgt. Lori Petro, Indiana State Police (ISP)
Sgt. Paul Andry, Indiana State Police (ISP)

Following is a summary of the comments received and IDEM’s responses thereto.

Comments received on LSA Document #05-182:

Comment 1: The commentor asked to be included in a work group to develop this rule. (VCHD) (ACT) (PI) (ISG) (EMI) (EHS)

Response: IDEM is including these commentors as part of the work group for this rule.

Comment 2: The commentor recommends that Indiana look at the Colorado regulations to see if there is additional language that could benefit the rule. Specifically, the interest of AIHA lies in the area of “certification for individuals involved in inspection, oversight, and cleanup of illegal labs”. AIHA supports the language found in the Colorado law and regulations that requires a Certified Industrial Hygienist (CIH) to verify that the property owner has met the cleanup standards established by the proposed rules. The commentor is not opposed to persons other than Certified Industrial Hygienists becoming qualified. The commentor’s concern is that individuals with no recognized training and education are beginning to represent themselves as qualified to oversee these cleanups. The commentor believes that using a CIH is the best means of ensuring the cleanup is done correctly. (AIHA) Individuals with a chemical exposure assessment or toxicology background must be involved with the project management when decontaminating properties or materials that have been directly exposed to hazardous materials used in the manufacturing of controlled substances addressed in the proposed rule. Certified Industrial Hygienists (CIHs) and Certified

Hazardous Materials Managers (CHMMs) have the education, training and experience necessary to safely oversee not only the necessary training and sampling procedures, but are also capable of documenting and providing recommendations on proper and effective decontamination techniques used in the safe handling and removal of contaminated materials. ISG strongly recommends that the following language, or similar language, be included in the rule:

Rule 2. Definitions

Sec. 2. “Certified person” means a person, as defined in IC 13-11-2-158(a), who has been certified by the department under this rule as qualified to supervise decontamination of contaminated property and certify that the property meets the decontamination level specified in 329 IAC 17-4-6, Table 1. A person is certified to supervise decontamination of a contaminated property when the department places that person’s name on the list of certified persons. Persons responsible for the supervision of sampling and final certification regarding decontamination will have either the Certified Industrial Hygienist (CIH) or Certified Hazardous Materials Manager (CHMM) credential. The CIH credential must be given by the American Board of Industrial Hygiene and the CHMM credential must be given by the Academy of Hazardous Materials Managers.

Rule 4. Certified Person

Sec. 2. (f) Certified Supervisors/Companies involved with the sampling must keep the following credentials:

- 1. Any sampling efforts will be supervised and reviewed by a certified Industrial Hygienist or Certified Hazardous Materials Manager.**

Sec. 7. (c) The person who signs the certificate of [decontamination] shall maintain professional liability insurance in the amount of at least one million dollars (\$1,000,000) and Errors and Omissions insurance in the amount of at least one million dollars (\$1,000,000) per occurrence.

Sec. 7. (f) Companies associated with the labor associated with the decontamination of properties shall maintain pollution prevention insurance of approximately three million dollars (\$3,000,000). (ISG)

The commentor has worked with many different CIHs with the conclusion that some do not have the expertise in the field that they are in. (PI)

Response: IDEM has reviewed information publicly available from the American Industrial Hygiene Association (AIHA) and the American Board of Industrial Hygiene (ABIH), the certifying body for CIHs. This review indicates that while all certified industrial hygienists are highly skilled and well-experienced, not all have acquired the specialized knowledge and skills necessary to certify decontamination under this rule, nor have all practiced in this field. It is clear that a significant number of persons, who for a variety of reasons have not become certified, also possess the knowledge and experience needed to successfully fulfill the duties described in this rule. IDEM does not intend to allow a single community to gain a monopoly on this important work. The AIHA has recently added a new specialty code, “Contamination Evaluations”, that can be used by members to describe their areas of expertise in their listings with the association. Persons who hold other certifications,

such as Certified Hazardous Materials Manager, may also have the necessary knowledge and experience and should not be excluded out of hand. IDEM's responsibility under IC 13-14-1-15 (Pub. L. 192-2005; SEA 444, Section 6) is to ensure that each certified person has the skills and experience needed to fulfill the duties described in this rule. IDEM believes that persons with the CIH, CHMM or other professional certifications will have a great advantage in becoming certified under this rule due to their high level of training and experience.

Comment 3: A third party qualified CIH should be hired to determine the level of hazard at a site. This third party has to have qualifications to determine the level of toxins in the site, be able to write a written protocol for all parties to comprehend, especially the decontamination company to make sure areas that need to be decontaminated are done along with areas that do not need decontaminated are left alone. All parties need to understand that this is not an open checkbook. The level of contamination and the cleaning protocol used must be determined by a CIH. (PI)

Response: There is a wide variety of opinion on the relationship between the certified person and the cleanup contractor. IDEM does not have any information that shows that a certified person associated with the cleanup contractor will provide inferior services or exploit the relationship for profit to a greater degree than a certified person who is a true third party. 329 IAC 17-3-1(d) prohibits an owner, certified or uncertified, from decontaminating property controlled by that person.

Nothing in this rule prohibits a Certified Industrial Hygienist from becoming certified. Not all Certified Industrial Hygienists have the specialized training or experience required by this rule. However, a qualified CIH should have no problem becoming certified under this rule.

It is beyond the scope of IC 13-14-1-15 and this rule to regulate pricing of decontamination services.

The services of the certified person are provided to the property owner. The property owner will receive complete documentation of the post-decontamination testing. As provided in 329 IAC 17-4-6, nothing in this rule prevents review and validation of this documentation by a third party retained by the owner or a prospective purchaser or renter.

Comment 4: The CIH must have substantial Errors and Omissions Insurance to justify their existence, their dedication to their industry. (PI)

Response: IDEM agrees and will add appropriate provisions to the draft rule. IDEM specifically requests information on the appropriate amount of such insurance to require. However, IDEM also believes that there are sufficient marketplace controls on this industry in place now and that it is not necessary to go to great lengths in this rule to provide detailed quality control standards for this industry.

Comment 5: The hauler of illegal controlled substances must be a third party firm reporting directly to a government agency or jurisdiction. They should have no affiliation with the CIH or decontamination company to prevent conflict of interest. It is pretty difficult to police a company's exposure level when you are doing multiple trades of a project. (PI)

Response: IDEM has not been tasked with, nor has it accepted, responsibility for overseeing decontamination of contaminated properties under this rule. Waste haulers are currently well-regulated and further regulation is unnecessary.

It should be noted that this rule places the burden of proper decontamination on the property owner. Failure to properly decontaminate the property will result in significant impairment of the owner's ability to reuse or market the property and will expose the owner

to increased liability.

Comment 6: The decontamination company must have at least a forty (40) hour HAZWOPER course. This is a must for all employees, subcontractors, etc. If a person enters the site, they must have the certification. We also feel that each person have a minimum of an eight (8) hour refresher course on an annual basis that is signed off by a third party administrator. (PI)

Response: 329 IAC 17-4-1 and 329 IAC 17-4-2 require certified persons and all persons who decontaminate contaminated properties to have training that meets the requirements of 29 CFR 1910.120(e)(Hazardous Waste Operations and Emergency Response).

Comment 7: The decontamination company must have a minimum of two million dollars (\$2,000,000) contractor's pollution coverage. (PI)

Response: IDEM agrees and will add appropriate provisions to the draft rule. IDEM specifically requests information on the appropriate amount of such insurance to require. However, IDEM also believes that there are sufficient marketplace controls on this industry in place now and that it is not necessary to go to great lengths in this rule to provide detailed quality control standards for this industry.

Comment 8: The rule must require established pricing, either by sample, by pound of waste material hauled, or by square footage or cubic footage as guidelines so pricing will be comparative, not all over the board. This practice is used in other restoration projects in the industry. (PI)

Response: Regulation of pricing is beyond the scope of IC 13-14-1-15 and this rulemaking.

Comment 9: The agency that has jurisdiction over the contaminated site must have complete control over the property and should release the property to the owner or agent of the owner when a post-decontamination assessment is completed by a qualified CIH and all parties affiliated with the project have been paid. (PI)

Response: Under Indiana law, the authority to prohibit occupancy of a contaminated property rests with the local health department (IC 16-41-20, IC 16-19-3-11, IC 16-20-1-19, IC 16-41-20-9). The local health department will allow the property to be reoccupied when the contamination at the property has been abated. This rule is intended to provide a mechanism for the owner to use to provide documentation that the contamination has been removed.

Comment 10: Who is going to pay for the services and how will these payments be made? (PI)

Response: IC 13-14-1-15 did not authorize IDEM to regulate fees and payment methods for these activities and IDEM does not customarily regulate private business transactions.

Comment 11: 329 IAC 17-1-1(1): Does this include properties owned or controlled by state, federal or local government entities? (EMI)

Response: Yes. However, IDEM will insert provisions to protect counties that come into possession of contaminated properties from liability under this article.

Comment 12: 329 IAC 17-2-5: In 17-2-7 you exclude both law enforcement and hazardous materials responders. This section should also exclude hazardous materials responders. (EMI)

Response: This definition is not an exclusion. It is intended to separate the activities performed by law enforcement agencies and their agents under their statutory authorities from the decontamination activities intended to be regulated under IC 13-14-1-15 (SEA 444, Section 6). Under current practice, contractors remove the materials and equipment used to manufacture illegal drugs under contract to the law enforcement agency that seizes the laboratory as an agent of the law enforcement agency. The person who decontaminates the property under this rule will do so under contract to the property owner or the owner's agent.

Comment 13: 329 IAC 17-3-1(b): Since the property disclosure may not occur until years after the cleanup, this creates a separate recordkeeping requirement for the owner that is not made explicit in the rule. According to [329 IAC] 17-4-7(d), the certified person must retain the record for only five (5) years. (EMI)

Response: There is no requirement for the owner to retain the certificate of decontamination and the attached analytical reports for any specified period of time. These reports are the evidence the owner will use to assure a prospective buyer or renter that the property has been properly decontaminated. It is in the owner's financial interest to keep this evidence as long as necessary to secure the owner's interest in the property.

Comment 14: 329 IAC 17-4-1(b)(2): How will you verify that such information was included in the [29 CFR] 1910.120(e) training course? Can the employer provide and certify the training of such persons? 29 CFR 1910.120(e) specifies several types of training. It would be helpful to list this as 29 CFR (e)(3) training. (EMI)

Response: One of the goals of this rulemaking project is to use existing capabilities as much as possible, including training providers that currently provide training to cleanup contractors. IDEM intends to accomplish the purpose of this rule with the least cost to regulated entities, as required by Indiana law. Each applicant will be required to document the required training in his or her application and IDEM reviewers will check for this training.

IDEM does not regulate the delivery of training under 29 CFR 1910.120(e). It is the responsibility of the employer to decide how to provide the required training to employees and others who work at a particular site for which that employer is responsible. It is the responsibility of the employer and the training provider to ensure that workers and supervisors receive the appropriate training. IDEM will coordinate with the Indiana Occupational Safety and Health Division (IOSHA) if review of these applications indicates that training providers or employers are failing to provide the training required by 29 CFR 1910.120(e).

29 CFR 1910.120(e)(3) provides for training of general site workers and other site workers. However, 29 CFR 1910.120(e)(1) and (2) contain important requirements for all training that must be followed, such as the requirement to train all workers and the subject matter that must be included in the training. Citing to 29 CFR 1910.120(e) covers all requirements.

Comment 15: 329 IAC 17-4-2(b): How is "equivalent qualifications" defined? Is actual prior experience in meth lab cleanup required or can other abatement certification (asbestos or lead supervisor) qualify? (EMI)

Response: It is important to understand the meaning of the requirement for equivalent qualifications. This requirement insures that the first applicants in Indiana will have the required experience even though there will be no certified persons to supervise and document their experience. This provision will facilitate the startup of this industry. IDEM is tasked by IC 13-14-1-15 with setting the level of qualification for certified persons and

will ensure that the equivalent qualifications presented by an applicant are truly equivalent. It is possible that the initial applicants will have to obtain their experience in states where qualified contractors are currently doing similar decontamination work.

Comment 16: 329 IAC 17-4-2(c): The correct citation for supervisor requirements is 29 CFR 1910.120(e)(4). (EMI)

Response: 29 CFR 1910.120(e)(4) provides for training of managers and supervisors. However, 29 CFR 1910.120(e)(1) and (2) contain important requirements for all training that must be followed, including the requirements to provide training and the elements that must be covered in the training. Citing only to 29 CFR 1910.120(e)(4) would ignore these important general requirements. Citing to 29 CFR 1910.120(e) covers all requirements.

Comment 17: 329 IAC 17-4-2(c)(1): “Training on decontamination and inspection of contaminated property provided by the department.” How long is this training course? What is the detailed content of the training course? Is it a review and explanation of the cleanup guidance or is additional content included? Why does the department provide it? I know of no other area of work where the department trains persons other than its own employees. If a person fails the exam which the department writes, is the department liable? If a department trainer trains narrowly to the exam, rather than to the full range of controlled substance cleanup, as that adequate training? Why can it be provided only by the department? (EMI)

Response: This course will be developed by IDEM in consultation with the Indiana State Department of Health, the Indiana State Police and other health and safety agencies. Constructive comment and advice from qualified training providers is welcome and will be of great value as this course is developed. However, IDEM does not want to delay this important rule for an extended period of time while the optimum course is developed.

Comment 18: 329 IAC 17-4-2(c)(2): “...With a score of at least eighty percent.” Why not the 70% used in all other areas of department certification? (EMI)

Response: Because scoring of a test is interrelated with the content, form and purpose of the test, and because the test has not yet been developed, IDEM is open to discussing the actual passing score in the overall context of the examination.

Comment 19: 329 IAC 17-4-2(c)(2): How much grace period is allowed? (EMI)

Response: IDEM intends to provide biennial refresher training. Certified persons will have to attend that refresher training when it is offered. Certified persons who fail to take the refresher training will be removed from the list because they will lack the updated knowledge required to safely and effectively perform these services. IDEM will make every effort to provide the refresher training at reasonably available times and places.

Comment 20: 329 IAC 17-4-3: If the department training and examination is the gateway [to certification], why is a separate application process involved? Why aren't applicants issued certification as a consequence of successful completion [of the training] instead of requiring a subsequent step? (EMI)

Response: IC 13-14-1-15 requires IDEM to determine which persons are qualified to inspect and clean contaminated properties. This rule specifies three criteria: 40 hours of experience decontaminating properties contaminated by illegal manufacture of controlled substances, the training required by 29 CFR 1910.120(e), and successful completion of training in decontamination of structures that contained drug labs evidenced by a passing score on an examination. These requirements are the minimum to ensure proper and safe

decontamination, and each must be separately documented and verified by IDEM to ensure property owners and their agents that the persons listed by IDEM are in fact qualified. This is a basic requirement of IC 13-14-1-15. Simply handing out certifications to persons who attend the training course would not ensure that those persons are in fact qualified and would not meet the intent of the statute.

Comment 21: 329 IAC 17-4-4: Is there an opt-out from electronic publishing for persons who do not wish to advertise their services? (EMI)

Response: IC 13-14-1-15 requires IDEM to maintain a list of all persons who are certified to inspect and clean contaminated properties. The primary purpose of the list is to allow owners and their agents to identify qualified persons and verify the certification of a prospective contractor. A person who does not wish to advertise may still engage in inspection and cleaning of contaminated properties, and must remain on the list to allow the owner or his agent to verify that person's certification. A secondary purpose of the list is to provide a central point where owners and their agents may locate qualified inspectors. The provision in 329 IAC 17-4-4(c) requiring a certified person to specify how that person should be listed is not intended to provide free advertising space but to allow owners and their agents to accurately identify them and easily get in touch with them.

Comment 22: IC 13-14-9-4 NIFL: The regulations need a provision for state, county or municipal acquisition of abandoned property. (EHS)

Response: IDEM agrees and will add provisions to protect the interests of units of government that acquire these properties.

Comment 23: How will this draft rule interact with House Bill 798, "Methamphetamine Remediation Research Act of 2005"? (EHS)

Response: H.B. 798 has not yet been signed into law, and its future is not certain. When it becomes law IDEM will examine the resulting statute and consider any appropriate changes to this rule that may be required. A major provision of H.B. 798 is to task the U.S. Environmental Protection Agency with studying the health effects of exposure to methamphetamine on adults and children. Hopefully, if the bill passes, such studies will be completed in a timely manner and yield solid information that can be used to set health-based decontamination levels that can be adopted in a future amendment to the rule.

Comment 24: 329 IAC 17-2-8 Manufacturing defined: The manufacturing process involves multiple steps and storage of raw materials at multiple locations. If just storage of raw materials occurred at a site, or if only disposal of wastes occurred at another site, would each site be treated as an "identified" site? What criteria will be used to determine an identified site? (EHS)

Response: This rule does not define "identified site" and does not use that term. Only terms used in this rule are defined, and creation of new terms not used in the rule may confuse users of the rule. The rule defines a "contaminated property" as a property that has been identified by a law enforcement agency as having been used for illegal manufacture of controlled substances and is reasonably expected to be contaminated. Because the identification of these properties is the responsibility of the law enforcement community, the criteria for such identification is beyond the scope of this rule.

Comment 25: 329 IAC 17-3-1(a)(1): Will the owner be required to secure the site and put up signage until the property is decontaminated? (EHS)

Response: Under Indiana law, the authority to prohibit occupancy of a contaminated

property rests with the local health department (IC 16-41-20, IC 16-19-3-11, IC 16-20-1-19, IC 16-41-20-9). Local health departments typically placard the building and remove the placards when they are notified that the property has been decontaminated. This is preferable to relying on the “owner” to secure the site. In any case, this rule is primarily concerned with hazards to public health from occupancy of contaminated properties. A contaminated dwelling unit does not present a health hazard as long as it is not occupied.

Comment 26: 329 IAC 17-3-1(d): Will the owner have any responsibility to warn or protect the demolition crew? (EHS)

Response: The issue of demolition was discussed during the Midwest Governor’s Conference Regional Methamphetamine Summit in December, 2005. It was the consensus of the cleanup protocol work group that a building used for illegal drug manufacture could be demolished safely without decontamination. IDEM welcomes additional data or experience that would confirm this or show significant hazards to demolition workers. An owner’s responsibility to warn others of hazards that exist at a property is well-established in Indiana law, and it would be anticipated that a demolition worker injured as a result of an owner’s failure to provide appropriate warning of a hazard would take advantage of the remedies provided in Indiana law. Reiteration of these statutory provisions is beyond the scope of this rule.

Comment 27: 329 IAC 17-3-1(e): The “disposal” of a vehicle could have interpretations other than destroying the vehicle. (EHS)

Response: IC 9-22 governs disposition of abandoned, salvaged and scrap vehicles. A vehicle that is reused or disposed of in a way other than provided for under IC 9-22 would have to be decontaminated under this article.

Comment 28: 329 IAC 17-3-2(a): Is an uncertified owner allowed to decontaminate or supervise decontamination of his or her own property? (EHS)

Response: No. 329 IAC 17-3-1(d) prohibits an owner, certified or uncertified, from cleaning his or her own property, and 329 IAC 17-3-2 prohibits an uncertified person from supervising decontamination, inspecting contaminated property, or issuing a certificate of decontamination.

Comment 29: 329 IAC 17-4-1(b)(2): HAZWOPER certification must include the training plus the first three days of on-the-job training plus yearly refresher training. (EHS)

Response: It is the responsibility of the employer and the training provider to ensure that all workers fully comply with the provisions of 29 CFR 1910.120(e). Completion of all required training must be documented in the application for certification.

Comment 30: 329 IAC 17-4-2(b): Does cleanup at non-drug hazardous waste sites count as the required experience? (EHS)

Response: No. 329 IAC 17-4-2(b) specifically requires “at least forty (4) hours of experience decontaminating contaminated properties.” The intent of the training and experience requirements is to equip the certified person with the specialized knowledge of hazards, standards and techniques unique to decontamination of former drug labs. This specific knowledge cannot be obtained on other sites that do not present the unique characteristics of these sites. IDEM has received inquiries from companies with no hazardous materials cleanup experience that intend to obtain the necessary training and experience.

Comment 31: 329 IAC 17-4-6(a)(1): Why does the rule incorporate the Alaska sampling guideline? Indiana should develop its own protocol. (EHS)

Response: IDEM examined sampling and cleanup protocols from Alaska, Arizona, Arkansas, Colorado, Illinois, Minnesota, Missouri, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Washington, Wisconsin and Wyoming. These protocols varied widely in completeness and usability. The Alaska sampling protocol was selected as the most comprehensive, most complete and easiest to use. No Indiana entity has offered to develop such a protocol. IDEM does not want to delay this rule for a significant period of time to develop a new protocol from scratch.

Comment 32: 329 IAC 17-4-6(a)(1): Soil and ground water must be considered before clearing a property. A common practice for the disposal of wastes, especially in rural or non-residential areas, is to dump the wastes on the ground. This often occurs just outside of a door or window where new occupants are likely to walk or play. You have addressed septic systems needing to be checked, but hazardous and toxic chemicals and drugs do not vanish when they run out into the leach field. The rule should include a requirement for a trained hydrogeologist to become involved in these cases. (EHS)

Response: At this point, IDEM is working hard to balance the thoroughness of the decontamination with the cost and difficulty of the work. Requiring an owner to hire an additional professional in all cases has not yet been shown to be necessary. IDEM has not received data or other information that shows that chemicals used in the illegal manufacture of controlled substances cause significant risk to health in the amounts that may be found in a septic system leach field. IDEM specifically requests additional information and data on this issue.

329 IAC 17-4-5(4) requires the certified person to “notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance, including a warning about the hazards that may be expected when cleaning the septic system”. The soil immediately outside a residence should be included in the assessment conducted by the certified person.

The rule requires the owner to decontaminate the property. If the contamination is distributed outside of the structure, it is the responsibility of the certified person to identify that contamination, remove it, and document its removal.

Comment 33: 329 IAC 17-4-6(a)(2): What if other drugs are present? What decontamination levels are to be used? Who will determine those levels? Who will be required to pay for a risk-based analysis if it is needed? There are few laboratories available to perform these analyses. (EHS)

Response: At the request of the methamphetamine task force, IDEM intends to add phencyclidine (PCP) and gamma hydroxybutyrate (GHB) to the list of controlled substances under this rule.

329 IAC 17-4-6(a)(2), Table 1, lists the required decontamination levels for each of the chemicals controlled under this rule. At the time this rule was developed, no health-based levels were available for any of these chemicals. The best information available to date indicates that a low level of remaining contamination, expressed in this rule as 0.1 µg/100 cm², is the best indicator of a thorough decontamination. When health-based data is available for safe exposure levels of adults and children to these chemicals, IDEM will revisit this rule and adjust these decontamination levels appropriately.

The property owner is responsible to bear all costs to return the property to reuse or marketability under this article. IDEM routinely works with laboratories that use SW-846 method 8270C. Some laboratories may use special extraction procedures to facilitate these

analyses. IDEM is specifically interested in comment from laboratories on the best methods to sample, extract and analyze for these chemicals.

Comment 34: 329 IAC 17-4-7(d): What will be required if the company is going out of business and the records are less than five years old? (EHS)

Response: If the certified person no longer meets the requirements of the rule, IDEM will remove that person from the list of certified persons. The primary intent of this record retention requirement is to allow IDEM to verify the quality of the certified person's work to determine if IDEM should continue to list that person, and also serve to protect the certified person if complaints about that person's work are received. The certified person is required to provide the owner with the certificate of decontamination and the laboratory reports that support the information on the certificate. Because it is in the owner's financial interest to maintain these records as long as the owner has an interest in the property, IDEM does not feel it is necessary to hold the owner's hand by specifying a record retention requirement for owners. If the property is abandoned and the county takes possession of the property, and the certificate of decontamination cannot be obtained from the certified person or the previous owner, the county or the subsequent purchaser can obtain a copy of the certificate from the local health department as provided in 329 IAC 17-4-7(c).

Comment 35: The manufacture of illicit methamphetamine (meth) in makeshift, clandestine laboratories is a growing concern throughout Indiana and the United States. There is a widespread understanding in the multifamily industry that an identified illegal drug laboratory must be reported to the appropriate law enforcement authorities. However, the residual health effects and safe decontamination levels of meth-related chemicals are largely unknown, which means these standards are not directly related to scientific or medical findings. (IAA)

Response: The commentor is correct to note that the decontamination levels in 329 IAC 17-4-6 are not health-based, because no health-based information on decontamination levels is currently available. However, all available information indicates that exposure to methamphetamine and other illegal controlled substances is very harmful to humans, and especially to children, infants and the unborn. That is why those substances are illegal. The intent of this rule is to set a decontamination standard in the least restrictive manner by specifying a safe, achievable decontamination level and allowing the owner, in consultation with a certified person, to use the most advantageous decontamination method available with proper decontamination demonstrated by verifiable post-decontamination testing. The decontamination levels proposed are levels that represent the lowest risk to occupants of a former clandestine laboratory. These levels are used in Alaska, Arizona, South Dakota, Tennessee and Washington. Arkansas and Colorado use $0.5 \mu\text{g}/\text{ft}^2$ for methamphetamine and Minnesota uses $1 \mu\text{g}/\text{ft}^2$. IDEM is amending the rule to substitute $1.0 \mu\text{g}/\text{ft}^2$ for $0.1 \mu\text{g}/100 \text{ cm}^2$. IDEM welcomes risk- and health-based studies or other information that will help to scientifically establish appropriate decontamination levels. When such information is available, IDEM will revisit this rule to establish health-based decontamination levels.

Comment 36: The rule is so broad that, under 329 IAC 17-2-3, any substance used in the manufacture of any controlled substance is considered a contaminant. (IAA)

Response: 329 IAC 17-2-3 includes illegally manufactured controlled substances, immediate precursors as defined in IC 35-48-1-17, chemical reagents and precursors defined in IC 35-48-4-14.5, and other substances used in or resulting from the illegal manufacture of controlled substances. IDEM is amending the rule to remove lead and mercury from the list of contaminants for which post-decontamination testing is required because the method

that produces those contaminants is no longer used in Indiana. IDEM is also removing volatile organic compounds and corrosives because these substances can be found in structures without the presence of illegal drugs. In any case, the controlling factor in this definition is “used in or resulting from the illegal manufacture of controlled substances”. This rule will not apply to a substance found in a structure that has not been identified as having been used for the illegal manufacture of controlled substances.

Comment 37: 329 IAC 17-2-4 provides that property where any controlled substance has been manufactured is “contaminated”, without regard to any actual contamination that may or may not exist. In order to cease being “contaminated”, a certificate of contamination must be issued. Such a certificate is issued only after decontamination processes are complete (see 329 IAC 17-4-5), meaning that even a property where there is no actual contamination exists must be decontaminated before it can be occupied again. (IAA)

Response: In 329 IAC 17-2-4, a property is contaminated if it “has been identified by a state or local law enforcement agency as having been used for the illegal manufacture of a controlled substance and is reasonably expected to be contaminated with chemicals used in the illegal manufacture of a controlled substance.” The most common controlled substance that is illegally manufactured is methamphetamine. The processes used today in clandestine drug laboratories necessarily results in some level of contamination, so it is reasonable to expect such a property to be contaminated. IDEM is considering modifying the requirement to have a property decontaminated to allow post-decontamination testing and certification without decontamination. However, this may increase costs to property owners where such testing shows that the property is in fact contaminated and must be decontaminated.

Comment 38: Under 329 IAC 17-3-1, an owner is prohibited from decontaminating property owned by that owner. Even a sophisticated owner, such as an apartment owner, cannot, through employees, perform any of the process of decontamination, including when the process merely involves removal and replacement of flooring or drywall. (IAA)

Response: The Indiana General Assembly, in IC 13-14-1-15, tasked IDEM with developing a pool of qualified “persons with particular expertise or experience in the inspection or cleanup of property contaminated by chemicals used in the illegal manufacture of a controlled substance (as defined in IC 35-48-1-9) or by waste produced from the illegal manufacture of a controlled substance”. The criteria in 329 IAC 17-4-2 are the minimum criteria to be able to safely and effectively decontaminate a property in compliance with Indiana law. Few property owners, if any, will have employees who meet these criteria. The prohibition against owner cleanup is intended to ensure that contaminated properties are properly and consistently cleaned, and to avoid conflicts of interest.

Comment 39: Restitution for cleanup and other costs should be shouldered by the perpetrator and be imposed in the course of related criminal proceedings. Restitution and state and local cleanup monies should be available to private property owners. (IAA)

Response: The subject of restitution is beyond the scope of this rulemaking.

Comment 40: Owner immunity should be available to provide a future liability waiver for civil claims brought against a property owner arising after an effective cleanup. (IAA)

Response: Property owner liability is beyond the scope of this rulemaking.

Comment 41: 329 IAC 17-4-2, Criteria for Certification: I would recommend that an exception be made for a Certified Industrial Hygienist (CIH) to be automatically considered a Certified Person. A CIH has the professional qualifications in place for this type of work

and should not be required to take the training. This may save a cost element to some of the interested firms who have a CIH on staff. (EES)

Response: Nothing in this rule prohibits a Certified Industrial Hygienist from becoming certified. Not all Certified Industrial Hygienists have the specialized training or experience required by this rule. However, a qualified CIH should have no problem becoming certified under this rule.

Comment 42: 329 IAC 17-4-4, Duties of Certified Person: The commentor recommends adding language to ensure that decontamination is performed in appropriate levels of personal protective equipment. (EES)

Response: The use and selection of personal protective equipment are a fundamental part of the training required by 29 CFR 1910.120(e) and are part of the duties required of supervisors at hazardous materials cleanup operations.

Comment 43: 329 IAC 17-4-5(7): Since the certified person will not be performing the actual disposal, the commentor suggests adding language that reads, “Verify that wastes resulting from decontamination are properly disposed at a permitted facility”. The way it is worded could open up some liability issues that some firms may not want to take on. (EES)

Response: IDEM cannot waive the requirements in 329 IAC 3.1, 327 IAC 7.1, and 329 IAC 10 to properly dispose of wastes. Proper waste disposal is an inherent part of all cleanup activities. The decontamination contractor avoids liability by complying with those requirements. Proper disposal of wastes should be made part of a contract to decontaminate a property. IDEM will include training on proper waste disposal in the training to be provided to certified persons.

Comment 44: 329 IAC 17-4-6, Table1: The requirements for analytical confirmation of volatile organic compounds (VOCs) are not necessary for air. Based on experience, VOCs are long gone by the time the decontamination occurs. The commentor feels that this level could be accomplished with the use of a portable real time instrument such as a PID or FID which of course would be properly calibrated with documentation submitted with the report. The use of analytical methods for VOCs would tend to drive up the cost of the project to the property owner. (EES)

Response: IDEM is considering removing mercury, volatile organic compounds and corrosives from the list of contaminants for which post-decontamination testing is required because the method that produces those contaminants is no longer used in Indiana, and because these substances can be found in structures without the presence of illegal drugs.

Comment 45: 329 IAC 17-4-6, Table1: The test for corrosives on surfaces can be easily accomplished with the use of pH paper. Laboratory analysis would drive up the cost of the decontamination. In the commentor’s experience, there are very few areas left that would have corrosives determination. (EES)

Response: IDEM is considering removing mercury, volatile organic compounds and corrosives from the list of contaminants for which post-decontamination testing is required because the method that produces those contaminants is no longer used in Indiana, and because these substances can be found in structures without the presence of illegal drugs.

Comment 46: It seems strange that the General Assembly required IDEM to set clean up standards for this instead of the public health regulatory agencies. (IEI)

Response: IC 13-14-1-15 tasked IDEM with developing rules “concerning the inspection and remediation of contaminated property.” IDEM has extensive experience in sampling,

testing, and remediating contaminated property under a variety of federal and state programs. IDEM also has extensive experience working with and hiring remediation contractors. This tasking must not be viewed in isolation. The Indiana State Department of Health is charged with the broad task of protecting public health, quarantining contaminated properties and abating health hazards presented by illegal drug laboratories. The Indiana State Police and local law enforcement agencies are responsible for identifying illegal drug laboratories, with removing the equipment and materials used in the laboratory, and with prosecuting related crimes. IDEM's tasking is to develop a system to ensure properties are cleaned and safe to reoccupy, and to develop a pool of qualified professionals who can safely and effectively decontaminate these properties.

Comment 47: The critical questions are what is the public health significance of residues remaining inside a residence after removal of containers of materials used in illegal manufacture of methamphetamine and what ought to be done to locate the residues and clean them up? The answer is that after a thorough cleaning of all surfaces and materials with a substance that dissolves the controlled substances (e.g. water and detergent), the area is clean of the substances in amounts that could reasonably pose any human health harm. And by doing that, all other chemicals that may have been spilled from the extraction and manufacturing process will also be reduced to insignificant levels (i.e. "decontaminated"). At that point you are well under chemical risk levels of normal household chemicals such as solvents from adhesives, dry cleaning solvents, medicines, perfumes, cleaning agents, and paint remover products. (IEI)

Response: This issue was discussed at the Midwestern Governor's Conference Regional Methamphetamine Summit in December, 2005. Decontaminating a contaminated property by washing with detergent and water and returning it to occupancy without post-decontamination testing was one method discussed. In the cleanup protocol work group, there was no consensus that this method would be appropriate for all illegal drug laboratories or that it would provide for adequate cleanup without proper post-decontamination testing. In this rule, IDEM is proposing to leave the choice of cleanup method and the determination of what to clean to the qualified inspector and to require decontamination to be demonstrated using stringent, verifiable post-decontamination testing.

Comment 48: The Indiana draft regulation is silent about what should be cleaned. It simply refers to an Alaskan guidance about how to test after decontamination is done and then gives chemical concentration values of what is to be in Indiana mandatory for sale of property, reuse or reoccupation. (IEI)

Response: There are a variety of decontamination methods that can be used, and specifying one method for use on all properties would leave some properties incompletely decontaminated while imposing excessive costs on others. In this rule, IDEM is proposing to leave the choice of cleanup method and the determination of what to clean to the qualified inspector in consultation with the local health department, and to require decontamination to be verified using stringent post-decontamination testing. IDEM examined sampling and cleanup protocols from Alaska, Arizona, Arkansas, Colorado, Illinois, Minnesota, Missouri, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Washington, Wisconsin and Wyoming. These protocols varied widely in completeness and usability. The Alaska sampling protocol was selected as the most comprehensive and easiest to use. No Indiana entity has offered to develop such a protocol. IDEM does not want to delay this rule for a significant period of time to develop a new protocol from scratch.

Comment 49: However, it does not say how many nor at what location the wipe samples

apply for composite tests. Is the minimum number to be that minimum mentioned as possibly useful in the Alaskan guidance? If the tests are to be the critical measure of compliance with the regulation, guidance about the location for regulatory purposes is critical when using what appears to be the average mass per 100 cm² taken from two, three or four discrete locations in a room and combining them. The regulation covers both the removal of chemicals and the decontamination of residuals and in fact defines “decontamination” in a manner consistent with just the removal of chemicals. The Alaskan guidance starts at the point that the chemicals and containers have been removed and focuses on how clean is clean enough for the furnishings and structures. That would be a good focus for IDEM as well. (IEI)

Response: IDEM examined sampling and cleanup protocols from Alaska, Arizona, Arkansas, Colorado, Illinois, Minnesota, Missouri, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Washington, Wisconsin and Wyoming. These protocols varied widely in completeness and usability. The Alaska sampling protocol was selected as the most comprehensive, most complete and easiest to use. No Indiana entity has offered to develop such a protocol. IDEM does not want to delay this rule for a significant period of time to develop a new protocol from scratch.

Comment 50: Without tighter direction for the State, the “adequate” decontamination in this draft could range from a draconian discarding of clothes, furniture, carpets, appliances with hundreds of confirmatory samples to a cursory cleaning of visible hot spots. Acceptability could vary from county to county. (IEI)

Response: The certified inspector is responsible for determining the extent of decontamination required and verifying that decontamination through post-decontamination testing. The decontamination levels will apply statewide.

Comment 51: Because the mercury could only be present (from the illegal operations) if a rare cooking method is used, it seems unreasonable to require that test for all sites. (IEI)

Response: Mercury and lead are generated by the amalgam or phenyl-2-propanone (P2P) methods of methamphetamine production. The Indiana State Police report that these methods have not been used in Indiana for several years. IDEM will remove these contaminants from the rule when it is presented to the board for adoption.

Comment 52: There is no particular reason for the person supervising the removal of containers of hazardous materials to be “certified”. People do that routinely in Indiana weekly under proper OSHA regulations for situations as dangerous as these. The “certified person” should be restricted to the judgment about whether the decontamination is “complete” in these illegal drug manufacture situations. (IEI)

Response: This rule does not cover dismantling of the laboratory and removal of containers and equipment by contractors under contract to a law enforcement agency (329 IAC 17-2-5). 329 IAC 17-4-2 requires the certified person to have current training required by 29 CFR 1910.120(e).

Comment 53: If IDEM believes that the chemical testing according to the protocols is meaningful, then it is bad policy to have the same person inspect, decontaminate and then re-inspect to say it is complete. You certainly do not want the same person to test that decontamination is complete as did the decontamination. (IEI)

Response: The decontamination, sampling and testing procedures in this rule are similar to those in place in a number of other states. We have not received evidence of unethical behavior on the part of cleanup contractors. Falsifying a certificate of decontamination

would subject both the qualified inspector and the property owner to significant liability, especially if it resulted in injury to a future occupant of the property.

Comment 54: This type of chemical testing, in fact, is not a good estimation of whether a large area is free of a particular contaminant. (IEI)

Response: While no chemical testing protocol is absolutely accurate and covers all areas of potential contamination, IDEM considered the Alaska protocol the most complete of all the protocols examined. When a more complete and relevant sampling protocol is available, IDEM will amend the rule to adopt it. This type of testing was adopted by most states with requirements for cleaning illegal drug laboratories.

Comment 55: If this type of certification is desired, then there needs to be a State government oversight mechanism to assure that the judgments and quality of work attested to by the certifier actually is what is being done. In this draft regulation, IDEM does not routinely receive the certificate of decontamination in order even to review what the certifier says he is doing. (IEI)

Response: Under 329 IAC 17-4-7, the certified person will be required to make all relevant records available to IDEM for inspection. In addition, 329 IAC 17-4-6 provides for third-party validation of the certificate of decontamination and the attached analytical data. Issuing the certificate of decontamination is a business transaction between the property owner and the certified person. The information can be verified by a prospective purchaser or tenant. IDEM anticipates that an owner who pays a significant fee for the certificate of decontamination, has significant flaws in that certificate discovered by a third party audit, and loses a sale or rental contract as a result, will report that event to IDEM and request an investigation of the certified person responsible as part of a claim against the certified person's liability insurance.

Comment 56: Be certain to clarify what "biannual " means. In other words, if a person takes the initial test in June what is the earliest and latest that person can take the next refresher in order to have met "biannual requirement". Failure to lock in that interpretation has been a serious problem in other IDEM programs. (IEI)

Response: IDEM will offer biennial refresher training every other year. Persons who desire to remain certified will take that training when it is made available. IDEM will work with currently certified persons to make the biennial refresher training readily available.

Comment 57: The commentor can understand the chemical removal folks not putting pure or mixtures of chemicals down the septic system or sewer system. The commentor can understand somehow informing the septage hauler that organic solvents and controlled substances may have gone into the septic tank because illegal manufacturing had been occurring. The commentor cannot understand how this ought to be a regulatory responsibility of the certifier. How does he know who that person will be? What will the septage hauler do about it? The hauler should assume bad and inappropriate stuff will be in any load and therefore not smoke around the pump; any municipal sewage system accepts regularly a small amount of bad and inappropriate stuff.

And why should the certifier test for substances in the septic system? Does a positive test for something change the instruction to the septage hauler? Does a negative test for something change the instruction to the hauler? And what is the test anticipated for the "sewage disposal system"? If that is the device in the sink, that level of detail is unnecessary and incomplete here. If it is the laterals, collection mains and the sewage treatment plant, that is quite the exercise.

The commentor could see notifying the sewage treatment plant operator and they could send trained people to test flammable gas levels in sewer lines as precaution. But to be of real use, that should happen at the time of the drug bust, not a week or two later when the certified person arrives for chemical testing. (IEI)

Response: The provision in 329 IAC 17-4-5(4) was recommended by the Indiana State Department of Health. It is a prudent precaution for the certified person to notify the person who services the septic system as part of the decontamination of the existence of a clandestine drug laboratory at the property. The additional requirements suggested by the commentor are unnecessary and do not provide additional safety.

Comment 58: After the containers of dangerous chemicals are removed by a professional or knowledgeable person, the decontamination of the place of the remaining spilled chemicals should be a straight-forward cleaning operation of the type done routinely by cleaning services. They should treat this like a blood pathogen cleanup - wear gloves and, depending on the person and situation, a Level C respirator and goggles.

Anything else could be present due to the nature of the situation.

If the area is aired out to release the organic solvent fumes, rugs and porous surfaces vacuumed with a commercial HEPA and everything scrubbed down several times thoroughly with hot water and commercial detergent you would have removed all biologically significant amounts of controlled substances and reaction products remaining.

If that is the case, a certified person should be one familiar with hazards of the chemicals present but more important is familiar with all hazards in these places (biologicals, fire damage, other chemicals) and has verifiable system to assure that the workers were observed doing a thorough cleaning job with detergent and water. It is the credibility of this person that is the critical importance.

Rather than testing each decontamination site at a finite number of points before allowing reentry, randomly test different situations thoroughly to determine that this protocol indeed works or if the particular individual is supervising correctly..

If someone wants their place tested for controlled substances for personal assurance, a contractor or the local health department could take several samples at likely hot spots. Obviously, that is not the same as testing everything.

The Alaskan guidance is written as a guidance manual with many options and descriptions of the possible consequences of the options. It is not a regulation saying what must be done. In fact, in Alaska a property owner can clean up the situation himself using the guidance. The commentor would suggest that the Indiana approach should be adjusted to capture the spirit of that of the guidance of that with focusing the certification on that which is meaningful and verifiable. (IEI)

Response: Because of the hazards described by the commentor, the requirement to comply with 29 CFR 1910.120(e) is appropriate. IDEM looks forward to the commentor providing additional data and information to help construct a more complete and relevant sampling protocol. Because of these hazards associated with decontaminating these laboratories, the technical requirements of sampling, and the obvious conflict of interest, it is not appropriate to allow property owners to decontaminate their own properties or certify decontamination.

Comment 59: Why did you exclude outbuildings and storage units that are not occupied? The fact that they are not occupied at the time of contamination is one thing, but there is no reason to assume that after cleanup of the site that they are not going to be occupied and have kids running around playing in them. You don't have any way of knowing that they are not going to be occupied in the future. Kids play in outbuildings all the time, so you

have no way of knowing that it's not going to become an occupied site. (SWMB1)

Response: IDEM agrees with the commentor's concerns and will make sure that the definition of "contaminated property" is as clear and specific as possible.

Comment 60: Why did you not include soil testing of areas immediately outside a contaminated structure? If the goal is to protect health, the kid is going to play outside the back door, and he gets into dirt all the time. (SWMB1)

Response: IDEM recognizes that, while the amount of actual contamination outside a contaminated property is relatively small, it still presents an unreasonable health risk to occupants of the structure, particularly children. IDEM will add specific provisions to deal with contamination outside a contaminated property.

Comment 61: Regarding the definition of contaminated property, is there a guideline as to how that determination will be made? (SWMB2)

Response: IDEM understands there will be some confusion about exactly which part of a property is contaminated. IDEM intends to structure this rule to be as clear and specific as possible, and to build on the activities of the law enforcement community that occur before activities under this rule begin.

Comment 62: What methods other than wipe testing would you use to test for drug residue? If testing is limited, why wouldn't you designate how to test and specify how the test should be done. Also, why would you not be more specific about the cleaning processes? The commentor is concerned that the property owner would decide how to clean up a property based on a financial decision, instead of doing what is right to clean up the property. (SWMB3)

Response: IDEM is investigating test methods other than wipe testing. We have not specified a particular cleaning method because we have found there is not a single method that is the best for all situations, and we feel it is important to allow the qualified inspectors the latitude to develop good techniques and use those techniques appropriately for each situation they encounter. The decision of which remediation method to use will always be an economic one for the property owner. The goal of this rulemaking is to provide the owner with enough alternatives and resources that the decision whether to clean the property or use the property without cleaning will never have to be an economic decision.

Comment 63: The commentor requested that, in addition to notifying the local health department, the qualified inspector be required to notify the State Department of Health that remediation of a contaminated property will take place. (ISDH)

Response: IDEM agrees and will add this requirement to the rule.

Comment 64: The commentor is concerned that the high cost of remediating a contaminated property will be a financial burden on the property owners and ultimately drive up the cost of housing as the cleanup costs are passed on to renters. (IAA)

Response: The commentor is correct that remediating a contaminated property will be a significant financial burden for the property owner. IDEM is working to minimize the financial burden of this rule, and to provide as many options for the owner as possible.

Comment 65: The rule should be clear in how it identifies a property, or a part of a property in a multi-family housing unit, as a contaminated property. The statute [IC 13-14-1-15] is not clear and the rule does not make it any clearer. (IAA)

Response: In the case of properties represented by the commentor, IDEM is adding a

provision to limit the portion of a property that is identified as a “contaminated property” to an individual dwelling unit that does not communicate with other units or spaces.

IDEM is considering several “triggers” to initiate a duty for the property owner to act under this rule, including:

- (1) Identification by a law enforcement agency as having been used for the illegal manufacture of a controlled substance and reasonably expected to be contaminated with chemicals used in the illegal manufacture of a controlled substance.
- (2) The property is named in the “Indiana State Police Methamphetamine Laboratory Occurrence Report” prepared under IC 5-2-15.
- (3) The enforcement authority for a unit of government, usually the chief administrative officer of the building department, has issued an order that identifies the property and results from the property having been used for the illegal manufacture of a controlled substance, or has taken emergency action related to the property resulting from the property having been used for the illegal manufacture of a controlled substance.
- (4) The Department of Child Services has removed children from the property who have been contaminated with chemicals used in the illegal manufacture of a controlled substance.
- (5) The property is listed on the future “Methamphetamine Repository” at the El Paso Information Center.

Comment 66: There is no statement in the rule about how quickly an assessment can or will be made to determine if there is actually contamination in the property that must be cleaned up. The rule seems to require decontamination in every case even if there is no actual contamination at the property. (IAA)

Response: IDEM recognizes that there will be situations where decontamination may not be required. The property owner has the option of retaining a qualified inspector to test the property to confirm that the property is not contaminated. If no contamination is found, the qualified inspector could issue a certificate of decontamination. However, the property owner who uses this approach needs to understand that, if that testing shows contamination above the regulatory level, the property must be decontaminated and the testing must be repeated to confirm proper decontamination. This will effectively double the testing costs. Since each situation will be unique, we are reluctant to make blanket statements about these properties. We are working to include as many alternatives as possible to allow each property owner to choose the most cost-effective solution for that particular situation.

Comment 67: The commentor requested a provision for a property owner to do part or all of the decontamination using the owner’s employees and resources. The owner would still be required to retain a qualified inspector to oversee the cleanup and certify the decontamination. This would allow a property owner to reduce cleanup costs. (IAA)

Response: IDEM is including an option to remove contaminated materials in lieu of cleaning them. This option may allow a property owner to do some or all of the remediation. However, we must repeat that a property that has been used as an illegal drug lab and has not been remediated is unsafe to work in and is the site of an uncontrolled hazardous materials release. A property owner who undertakes a remediation under this rule must be prepared to protect workers and properly dispose of resulting waste. Even if some or all of the contaminated materials are removed, the owner would still have to obtain a certificate of decontamination to reoccupy, reuse or sell the property.

Comment 68: The rule ought to have a provision that limits the work required by the qualified inspector to not go overboard, but to identify precisely what work will be required to bring the property to an acceptable standard, not the ideal repair. (IAA)

Response: Regulating the cost of remediation is beyond the scope of this rule and beyond IDEM's capability. A prudent property owner will obtain bids from more than one contractor, ask questions, require the contractor to justify costs, and use safeguards common to all business transactions.

Comment 69: The owner ought to have some immunity in this process, and the fact that the owner has been notified that the property is contaminated, and the owner has taken steps to decontaminate, ought not to be the basis for civil liability. (IAA)

Response: While the subject of owner immunity is beyond the scope of this rule, we feel that prudent property owners who remediate their properties following this rule will minimize their liability for damages to others resulting from contamination at their properties.

Comments received on LSA Document #06-125:

Comment 70: 318 IAC 1-3-2: It is unclear if the initial assessment in 318 IAC 1-3-2 refers to the assessment performed by the qualified inspector or the enforcement agency. (EHS)

Response: This section refers to the initial assessment performed by the qualified inspector under 318 IAC 1-5-1(3). IDEM will clarify this reference in the final rule.

Comment 71: If IDEM was required to create and maintain a list of persons who are qualified to inspect and clean property that is polluted by a contaminant that was to include chemicals used in the illegal manufacture of controlled substances, immediate precursors of controlled substances, and waste produced from the illegal manufacture of controlled substances, why does Table 1 only include a list of controlled substances? It should also include a list of immediate precursors of controlled substances, and waste produced from the illegal manufacture of controlled substances. (EHS) Regarding 318 IAC 1-5-1: Why does Table 1 only include a list of controlled substances? It should also include a list of immediate precursors of controlled substances, and waste produced from the illegal manufacture of controlled substances, if the list of contaminants was expanded to include those chemicals. (EHS) Regarding 318 IAC 1-5-2: In addition to the drugs identified by law enforcement reports, the inspection should also test for the hazardous levels of the immediate precursors of controlled substances, and waste produced from the illegal manufacture of controlled substances. (EHS)

Response: IC 35-48-4-14.5 (SEA 444, section 8) lists 39 "chemical reagents or precursors" and can potentially include hundreds of substances. Testing for each of these, or for all chemicals that may be used in a single clandestine laboratory, would be prohibitively expensive and require several sampling methods and a variety of analytical procedures. Most of the substances listed as chemical reagents or precursors can exist at a property without being associated with illegal drug manufacture. The greatest barrier to owners actually cleaning up their contaminated property is the high cost of cleanup and testing. IDEM has written this rule to minimize the testing requirements by setting a meaningful testing requirement using the illegal drug itself as an indicator of remaining contamination. IDEM believes that cleaning up a contaminated property to the decontamination levels in this rule will result in a thorough cleanup that will remove all precursors as well as the actual drug itself.

Comment 72: In vacant buildings it may be more important for the owner to prevent rather than allowing reoccupation or reuse of the property. (EHS)

Response: 318 IAC 1-3-2(3) is intended to require the owner to prevent occupancy by requiring the owner to clean up the property before allowing the property to be reoccupied or reused.

Comment 73: If contamination is found outside the structure, the procedure to follow is in 318 IAC 1-5-3, not the lab procedure referenced in 1-5-7. (EHS)

Response: IDEM will correct this reference in the final rule.

Comment 74: If disposal of hazardous wastes is needed, will the property owner be required to sign the manifest as the generator? Will the address require an EPA ID number? Will the owner be required to complete the DOT training if he/she is signing the manifest? The inspector should not be required to be take the responsibility of being the generator. (EHS)

Response: The situation referred to in the comment should be a rare occurrence. 40 CFR 261.4(b)(1) excludes household waste from the definition of hazardous waste. Few property owners would be hazardous waste generators who would be required to comply with the hazardous waste management regulations in 40 CFR 260 through 40 CFR 273. Those regulations (incorporated by reference in 329 IAC 3.1) remain in force and are not set aside by this rule.

Comment 75: I am told by laboratory personnel that the 8272C (*sic.* 8270C) method that has very poor recovery and sensitivity limits. They suggest that the National Institutes of Occupational Safety and Health (NIOSH) methods (such as 9106 modified) are far superior. (EHS) Regarding 318 IAC 1-5-7: I am told by laboratory personnel that the 8272C [*sic.* 8270C] method that has very poor recovery and sensitivity limits. They suggest that the NIOSH methods are far superior. (EHS)

Response: One laboratory on contract to IDEM indicated a method detection limit of 0.15 µg/100cm² for methamphetamine. Other laboratories we have contacted said they get good results with Method 8270C using laboratory-developed extraction procedures. All of these extraction procedures are proprietary and we have not been able to obtain any of them. We have been in contact with the Centers for Disease Control which is approving NIOSH method 9106. That method is not yet approved for general use, but we understand that it will be specific for methamphetamine, more sensitive than Method 8270C, and less expensive to run. The rule was specifically written to allow use of equivalent methods acceptable to the department. If NIOSH method 9106 meets expectations, we intend to accept it as an equivalent method. To ensure that the decontamination levels are achievable with these methods, we intend to change the final decontamination level for all substances listed in Table 1 to 0.5 µg/100cm².

Comment 76: The final decontamination levels listed in Table 1 are questionable and need justification. (EHS)

Response: It is unclear what the commentor means by “questionable.” The decontamination level in this rule is intended to represent a thorough cleanup. No health-based levels exist for these substances. When health-based exposure levels for these substances are available, IDEM will reopen the rule to include health-based decontamination levels. The following states currently use similar decontamination levels:

Alaska	0.1 µg/100cm ²
Arizona	0.1 µg/100cm ²
Arkansas	0.5 µg/ft ² (recommended cleanup level)
Colorado	0.5 µg/ft ²

Minnesota	1 $\mu\text{g}/\text{ft}^2$
Montana	0.1 $\mu\text{g}/100\text{cm}^2$
South Dakota	0.1 $\mu\text{g}/100\text{cm}^2$
Tennessee	0.1 $\mu\text{g}/100\text{cm}^2$
Washington	0.1 $\mu\text{g}/100\text{cm}^2$

A good discussion of the rationale for these levels can be found in “Support for Selection of a Cleanup Level for Methamphetamine at Clandestine Drug Laboratories,” Colorado Department of Public Health and Environment, February, 2005.

One laboratory on contract to IDEM indicated that they achieve a method detection limit of 0.15 $\mu\text{g}/100\text{cm}^2$ for methamphetamine using Method 8270C. Other laboratories we have contacted said they get good results with Method 8270C using laboratory-developed extraction procedures. All of these extraction procedures are proprietary and we have not been able to obtain any of them. We have been in contact with the Centers for Disease Control which is approving NIOSH method 9106. That method is not yet approved for general use, but we understand that it will be specific for methamphetamine, more sensitive than Method 8270C, and less expensive to run. The rule was specifically written to allow use of equivalent methods acceptable to the department. If NIOSH method 9106 meets expectations, we intend to accept it as an equivalent method. To ensure that the decontamination levels are achievable with these methods, we intend to change the final decontamination level for all substances listed in Table 1 to 0.5 $\mu\text{g}/100\text{cm}^2$.

Comment 77: Why is the laboratory independent from, the owner, the state, or the inspector?

Shouldn't the laboratory be qualified, certified and at least listed by the state? (EHS)

Response: This requirement is intended to prevent a conflict of interest and produce credible laboratory results. IDEM has not received evidence that shows that state certification of laboratories would materially improve the accuracy or reliability of analytical results under this rule.

Comment 78: Regarding 318 IAC 1-5-4: What is to prevent the owner from selling, giving away or just temporarily storing off-site then bringing back all the contaminated rugs, furniture, toys, clothing etc.? There would be a tremendous potential for endangering the public. Disposal at an appropriate disposal facility should be required with some sort of documentation or confirmation. (EHS) Regarding 318 IAC 1-5-5: Again, what is to prevent the owner from selling, giving away or just temporarily storing off-site then bringing back all the contaminated rugs, furniture, toys, clothing etc.? There would be a tremendous potential for endangering the public. Disposal at a appropriate disposal facility should be required with some sort of documentation or confirmation. (EHS)

Response: IDEM agrees and will add this provision to the final rule.

Comment 79: For the inspector to sign off on certification of decontamination without inspection, would be worthless. The inspector would have to have to oversee the removal, disposal or washing of each piece of potentially contaminated material. (EHS)

Response: The rule requires the qualified inspector to supervise decontamination of the property, and then inspect the property following the procedure in the rule before issuing a certificate of decontamination. “Signing off” on a certificate of decontamination without first inspecting the property would violate the rule and potentially subject the property owner and the inspector to significant personal liability for any resulting damages.

Comment 80: If the owner can get away by saying that something was washed, why does

the contractor's cleanup have to be verified by testing? (EHS)

Response: The property owner can make any number of representations about their property, but those representations are meaningless for purposes of this rule. The owner cannot reoccupy, reuse, or sell the property without a certificate of decontamination. The property owner cannot issue a valid certificate of decontamination for that property. The certificate of decontamination may only be issued by a qualified inspector who is currently listed by IDEM following an inspection of the property.

Comment 81: Regarding 318 IAC 1-5-6: Acceptance limits for composite samples must be lower than for discrete samples. If one sample out of four samples is 399% above the limit, without a lower limit for a composite sample that room would be certified as clean. (EHS)

Response: This rare situation would only occur if the room sampled had been thoroughly cleaned below the method detection level (non-detect), but one portion, such as one wall, had been cleaned only to 1.99 $\mu\text{g}/100\text{ cm}^2$. If the four room samples were combined into a single sample for analysis, it would be impossible to determine if one sample was above the decontamination level. The proposed decontamination level of 0.5 $\mu\text{g}/100\text{ cm}^2$ is very low, and 399% of that number, or about 2.0 $\mu\text{g}/100\text{ cm}^2$ is still representative of a thorough cleanup. A prudent qualified inspector who believed that one sample was above the final decontamination level would reclean and resample that room. It must be remembered that the goal of this rule is to clean contaminated properties and return them to safe occupancy, not just to meet numbers. Qualified inspectors who issue certificates of decontamination knowing that a sample exceeded the final decontamination level would not only be risking removal from the qualified inspector list but would be subjecting themselves and the property owners who retain them to increased liability for potential damages.

Comment 82: The final decontamination levels in 318 IAC 1-5-2, Table 1, are below the method detection levels the commentor is currently achieving using SW-846 Method 8270C. (ARDL)

Response: IDEM will adjust the final decontamination levels in 318 IAC 1-5-2, Table 1, to be achievable using Method 8270C and other equivalent analytical methods.

Comment 83: Please define "certificate of decontamination" in the definitions section. (KER)

Response: The certificate of decontamination is adequately described in proposed 318 IAC 1-5-9 and further definition would not improve the rule. IDEM does not intend to place the form itself in the rule. Placing the form in the rule would make it very difficult to improve based on the qualified inspectors' experience with it.

Comment 84: What about including red phosphorus, lead, mercury, inorganic acids, and iodine in Table 1. These may be significant byproducts of the cooking process. (KER)

Response: IDEM is assuming that a thorough cleanup of the property that reduces the levels of controlled substances to the low levels in Table 1 will also reduce the levels of precursors and byproducts to safe levels. We are very aware of the costs associated with cleanups under this rule. Additional testing for a large number of other chemicals will significantly increase the cost of cleanup.

Comment 85: What about including appropriate disposal means and methods? (KER)

Response: Disposal of waste in Indiana is exhaustively regulated under 329 IAC 3.1, 329 IAC 10, and other Indiana and federal regulations. Adding additional disposal requirements

in this rule is unnecessary and potentially confusing. We will add a requirement to dispose of the materials within 72 hours and a prohibition on selling or transferring the materials to anyone else.

Comment 86: What about sampling wells and septic systems in addition to soils in suspected dumping areas. (KER)

Response: Incidents of deliberate well contamination are very rare and should be handled using existing procedures for well or ground water contamination. Septic tank cleaners we have contacted do not consider a septic system in a drug lab contaminated property to be significantly more hazardous than other septic systems. It is common practice for residents to pour a variety of materials, including acids, solvents, and other materials listed as drug precursors into their septic systems without any association with illegal drug manufacture. This rule is intended to establish a cadre of skilled and responsible cleanup contractors who will accurately assess a particular situation and take all necessary action. We are relying on those contractors to thoroughly clean these properties using their skills and professional judgment. It is not possible to develop a rule that will address every possible situation and provide a technical solution for each. Such a rule would eliminate the need for the qualified inspector's skills and knowledge.

The following comment was provided by telephone on May 30, 2006:

Comment 87: The commentor described a situation where he was asked to test a residence that had been used for illegal drug manufacture. Neither the local law enforcement agency or the local health department had inspected the property or completed any reports concerning the property, even though they were aware of the situation. The commentor recommended that this rule be made applicable to properties that were used for illegal manufacture of drugs even if the local law enforcement agency has not reported their existence. (EHS)

Response: IDEM agrees and will add this provision to the final rule.

The following comments were received during a meeting on May 25, 2006 between IDEM Office of Land Quality, the Indiana State Police, and the Hamilton County Health Department:

Comment 88: There is no way for IDEM to monitor the activity of qualified inspectors to determine if work under this rule is being done properly. IDEM should receive copies of the notices and certificates from the qualified inspectors. (OER)

Response: IDEM agrees and will add provisions to provide copies of the qualified inspectors' notices and certificates to IDEM.

Comment 89: In 318 IAC 1-2-6, the local law enforcement agency may not have identified a clandestine drug lab in writing or may be unaware of the drug lab, meaning the rule would not apply to that property. The rule should apply to any property used as a drug lab that is actually contaminated, whether or not it has been formally identified by a law enforcement agency. (ISP)

Response: IDEM agrees and will add this provision to the final rule.

Comment 90: The rule should require all materials removed from a drug lab to be properly disposed of as soon as possible. (OER)

Response: IDEM agrees and will add this provision to the final rule.

The following comments were received at the 18th Annual Indiana Hazardous Materials and Environmental Safety Conference:

Comment 91: Proposed 318 IAC 1-6-2 should include a provision to prohibit salvaging. A number of demolition contractors salvage materials from structures being demolished and could transfer contaminated materials to other unsuspecting persons. Demolition materials should not be allowed to lie around. They should be disposed of as soon as possible. (DESI)

Response: IDEM agrees and will add this provision to the final rule.

Comment 92: The demolition contractor should be required to remove the entire septic system, including the leaching field if it has been contaminated. (DESI)

Response: IDEM feels this issue can best be addressed by the government entity that issues the demolition permit. IDEM will continue to study this issue and propose additional requirements as needed.

Comment 93: 318 IAC 1-5-2, Table 1 should include amphetamine and methcathenone because they are also illegally manufactured in Indiana. (ISP)

Response: IDEM agrees and will add these substances to Table 1 in the final rule.

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**TITLE 318 DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT**

Proposed Rule
LSA Document #06-125

DIGEST

Adds 318 IAC concerning the inspection and cleanup of properties contaminated by chemicals used in the illegal manufacture of a controlled substance in accordance with IC 13-14-1-15. Effective 30 days after filing with the Secretary of State.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Background:

The Indiana Department of Environmental Management (Department) is authorized to adopt the proposed rules under IC 13-14-1-15, added by Public Law 192-2005 (SEA 444, SECTION 6). Under that section, the Department is required to create and maintain a list of persons who are qualified to inspect and clean property that is polluted by a contaminant. That Act added chemicals used in the illegal manufacture of controlled substances, immediate precursors of controlled substances, and waste produced from the illegal manufacture of controlled substances to the definition of contaminants. That Act also required the Department to adopt rules to establish qualifications for persons qualified to inspect and clean contaminated properties and to set standards for cleaning these properties.

Estimated number of small businesses subject to the proposed rule:

Small businesses affected by this rule are generally identified by the following NAICS codes:

- 23594 Wrecking and Demolition Contractors. In 2002, there were 29 establishments in NAICS Code 23594 with fewer than 100 employees in Indiana. The Department estimates that no more than 12 entities in NAICS Code 23594 will apply for listing under this rule. The Department assumes that all of these entities are small businesses.
- 5311 Lessors of Real Estate, including 53111 Lessors of Residential Buildings and Dwellings, 53112 Lessors of Nonresidential Buildings (except Miniwarehouses), 53113 Lessors of Miniwarehouses and Self-Storage Units, and 53119 Lessors of Other Real Estate Property. In 2002, there were 1,778 establishments in NAICS Code 5311 with fewer than 100 employees in Indiana. The Department estimates that about 113 of these entities will be affected annually by this rule. It is reasonable to assume that all of these entities are small businesses.
- 562111 Solid Waste Collection. In 2002, there were 114 establishments in NAICS 562111 with fewer than 100 employees in Indiana. Because this rule does not require contaminated properties owned by these entities to be cleaned, the Department estimates that none will be affected by this rule.
- 56291 Remediation Services. In 2002, there were 51 establishments in NAICS Code 56291 with fewer than 100 employees in Indiana. The Department estimates that approximately 12 entities in NAICS Code 56291 will apply for listing under this rule. It is not possible to determine at this time how many will be small businesses.
- 72111 Hotels (except casino hotels) and Motels. In 2002, there were 762 establishments in NAICS Code 72111 with fewer than 100 employees in Indiana. The Department estimates that about 18 of these establishments will be affected annually by this rule. The Department estimates that 17 of these entities will be small businesses.
- Other small businesses that may be affected as property owners may be farms and other property owners with open land or vacant structures. Because the occurrence rate of illegal drug labs is very low, a very small percentage of these entities would be affected. It is not possible to determine at this time how many will be small businesses.
- A number of construction contractors in NAICS codes 233 and 235 that are small businesses may be affected by the requirement to comply with 29 CFR 1910.120(e) if they reconstruct contaminated properties. There is no way of estimating at this time how many of these entities would engage in reconstructing contaminated properties and be affected by or benefit from this proposed rule. It is not possible to determine at this time how many will be small businesses.

Estimated average annual reporting, record keeping, and other administrative costs:

Following cleanup of a contaminated property, the proposed rule would require a qualified inspector to provide the owner of the contaminated property with a certificate of decontamination and to provide copies to the local health department and the State Department of Health. The owner of a contaminated property could

remove contaminated materials from a structure but would be required to obtain a certificate of decontamination for that property. A demolition contractor would be required to provide the property owner and the local and state health departments with a written notice that demolition has been completed. The qualified inspector would have to retain laboratory records for five years or transfer them to the local or state health department. The Department has no way to meaningfully estimate these administrative costs at this time.

Estimated total economic impact of compliance with the proposed rule:

Because the Department cannot predict the choices property owners may make in the future, the economic impact of this rulemaking cannot be meaningfully quantified at this time. Compliance with this rule will be a significant cost to property owners affected by this rule. At the same time, compliance with this rule would allow remediation contractors, wrecking contractors, and other contractors to receive payment for services performed under this rule. The Department expects the costs to property owners to roughly balance the benefits to contractors who clean up these properties.

Statement justifying the imposition of the costs and requirements:

IC 13-14-1-15 requires the Department to establish a list of persons qualified to inspect and clean contaminated properties. That law also requires the Department to adopt rules for cleanup and standards for listing.

Regulatory flexibility analysis of less intrusive, less costly or alternative methods:

The proposed rule includes alternatives that will allow an individual property owner to select the most cost-effective cleanup option for that owner's individual situation. The rule includes only the minimum requirements that will allow a remediation contractor to protect human health while cleaning up a property, complying with federal requirements, and disposing of resulting waste in compliance with Indiana law.

318 IAC

SECTION 1. 318 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 318 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

ARTICLE 1. INSPECTION AND CLEANUP OF PROPERTY CONTAMINATED WITH CHEMICALS USED IN THE ILLEGAL MANUFACTURE OF A CONTROLLED SUBSTANCE

Rule 1. General

318 IAC 1-1-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15

Affected: IC 6-1.1-25-4.1; IC 13-14-1-15

Sec. 1. This article applies to the following:

(1) The owner of a contaminated property as defined in 318 IAC 1-2-14.

(2) A person who applies to be listed or who is listed by the department as qualified to inspect and clean up contaminated property.

(3) A person who cleans up contaminated property under this article.

(4) A county that takes possession of a contaminated property in accordance with IC 6-1.1-25-4.1

(Department of Environmental Management; 318 IAC 1-1-1)

Rule 2. Definitions

318 IAC 1-2-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11; IC 13-14-1-15

Sec. 1. The definitions in IC 13-11 and this rule apply throughout this article. *(Department of Environmental Management; 318 IAC 1-2-1)*

318 IAC 1-2-2 "Certification" or "certify" defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. "Certification" or "certify" means the act of stating the facts about the inspection of a contaminated property under 318 IAC 1-5 and stating in writing that the facts are true and accurate. *(Department of Environmental Management; 318 IAC 1-2-2)*

318 IAC 1-2-3 “Chemicals used in the illegal manufacture of a controlled substance” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-42; IC 35-48-1-9; IC 35-48-1-17; IC 35-48-4-14.5

Sec. 3. “Chemicals used in the illegal manufacture of a controlled substance” means all substances used in or resulting from the illegal manufacture of controlled substances including the following:

- (1) Contaminants as defined in IC 13-11-2-42.**
- (2) Controlled substances as defined in IC 35-48-1-9.**
- (3) Immediate precursors as defined in IC 35-48-1-17.**
- (4) Chemical reagents and precursors as defined in IC 35-48-4-14.5.**

(Department of Environmental Management; 318 IAC 1-2-3)

318 IAC 1-2-4 “Cleanup” or “clean up” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 9-22; IC 13-14-1-15

Sec. 4. (a) “Cleanup” or “clean up” means either of the following:

- (1) Decontamination, followed by inspection and certification of decontamination under 318 IAC 1-5.**
- (2) Demolition of the structure under 318 IAC 1-6.**

(b) The term refers to actions taken after the operation used for illegal manufacture of a controlled substance has been dismantled by a law enforcement agency or its agents.

(c) In the case of a vehicle, the term means either of the following:

- (1) Decontamination, followed by inspection and certification of decontamination under 318 IAC 1-5.**
- (2) Disposal under IC 9-22.**

(Department of Environmental Management; 318 IAC 1-2-4)

318 IAC 1-2-5 “Commissioner” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 5. “Commissioner” means the commissioner of the department. *(Department of Environmental Management; 318 IAC 1-2-5)*

318 IAC 1-2-6 “Contaminated property” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 5-2-15; IC 10-11-8-2; IC 13-11-2-42; IC 13-14-1-15; IC 36-7-9

Sec. 6. (a) “Contaminated property” means real property or a vehicle that meets any of the following criteria:

- (1) The property or vehicle:**
 - (A) has been identified by a law enforcement agency as having been used for the illegal manufacture of a controlled substance; and**
 - (B) is reasonably expected to be contaminated with chemicals used in the illegal manufacture of a controlled substance.**
- (2) The law enforcement agency that terminates the operation of a methamphetamine laboratory has reported the existence of an operational laboratory at that property on the “Indiana State Police Methamphetamine Laboratory Occurrence Report” form in accordance with IC 5-2-15.**

(b) For an apartment building, multifamily dwelling, condominium, hotel, or motel, the term is limited to the unit that was identified by the law enforcement agency as having been used for the illegal manufacture of a controlled substance if all of the following are true:

- (1) The entry to the unit is located on the:**
 - (A) outside of the structure; or**
 - (B) interior of the structure and is closed by a door assembly that meets the requirements of the 2003 Indiana Building Code at 675 IAC 13-2.4.**
- (2) The unit has no opening to another unit or space. However, if the unit connects to another unit or space, the contaminated property includes all connecting units or spaces.**
- (3) The heating, ventilating, and air conditioning system for that unit is enclosed within that unit and is separate from the heating, ventilating, and air conditioning system of any other unit, except for:**

- (A) a hot water boiler that serves more than one (1) unit in the structure; or
- (B) an air conditioning condenser located outside the structure.

(c) The property is not a contaminated property if the law enforcement agency that identifies the property as having been used for the illegal manufacture of a controlled substance determines that:

- (1) the process used to manufacture the controlled substance has not been started;
- (2) all chemicals to be used to manufacture the controlled substance have been removed; and
- (3) no contamination related to the illegal manufacture of a controlled substance is present.

(d) The term includes any areas outside a structure that were used for the disposal of chemicals used in the illegal manufacture of a controlled substance.

(e) A property is no longer a contaminated property when the certificate of decontamination for that property is issued. *(Department of Environmental Management; 318 IAC 1-2-6)*

318 IAC 1-2-7 “Contamination” or “contaminant” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-42; IC 13-14-1-15

Sec. 7. “Contamination” or “contaminant” has the meaning set forth at IC 13-11-2-42. *(Department of Environmental Management; 318 IAC 1-2-7)*

318 IAC 1-2-8 “Decontaminate” or “decontamination” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 8. “Decontaminate” or “decontamination” means removal of chemicals used in the illegal manufacture of a controlled substance from a contaminated property that occur after the operation used for illegal manufacture of a controlled substance has been dismantled by a law enforcement agency or its agents. *(Department of Environmental Management; 318 IAC 1-2-8)*

318 IAC 1-2-9 “Department” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-13-1; IC 35-48-1-9

Sec. 9. “Department” means the department of environmental management established under IC 13-13-1. *(Department of Environmental Management; 318 IAC 1-2-9)*

318 IAC 1-2-10 “Illegally manufactured controlled substance” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 35-48-1-9

Sec. 10. “Illegally manufactured controlled substance” means a controlled substance, as defined in IC 35-48-1-9, that has been illegally manufactured. *(Department of Environmental Management; 318 IAC 1-2-10)*

318 IAC 1-2-11 “Inspect” or “inspection” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 11. (a) “Inspect” or “inspection” means the activities conducted to confirm that the property meets the decontamination levels in 318 IAC 1-5-2, Table 1, or to confirm that decontamination is not required. These activities are regulated by 318 IAC 1-5 and include the following:

- (1) Sampling.
- (2) Analysis by an independent laboratory.
- (3) Reporting of laboratory results.

(b) The term does not include activities of any of the following:

- (1) State and local law enforcement agencies.
- (2) Hazardous materials responders.
- (3) Local health departments.

(Department of Environmental Management; 318 IAC 1-2-11)

318 IAC 1-2-12 “Law enforcement agency” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 10-11-8-2; IC 35-48-1-18

Sec. 12. “Law enforcement agency” has the meaning set forth in IC 10-11-8-2. *(Department of Environmental Management; 318 IAC 1-2-12)*

318 IAC 1-2-13 “Manufacture” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 35-48-1-18

Sec. 13. “Manufacture” has the meaning set forth in IC 35-48-1-18. *(Department of Environmental Management; 318 IAC 1-2-13)*

318 IAC 1-2-14 “Owner of the contaminated property” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 35-48-1-18

Sec. 14. “Owner of the contaminated property” means either of the following:

(1) A person having an ownership interest in the contaminated property.

(2) An agent of a person having an ownership interest in the contaminated property.

(Department of Environmental Management; 318 IAC 1-2-14)

318 IAC 1-2-15 “Person” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-158

Sec. 15. “Person” has the meaning set forth at IC 13-11-2-158(a). *(Department of Environmental Management; 318 IAC 1-2-15)*

318 IAC 1-2-16 “Qualified inspector” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-158

Sec. 16. “Qualified inspector” means a person who has been placed on the qualified inspector list. *(Department of Environmental Management; 318 IAC 1-2-16)*

318 IAC 1-2-17 “Qualified inspector list” defined

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-158; IC 13-14-1-15

Sec. 17. “Qualified inspector list” means the list of persons that the department has determined to be qualified to carry out the duties described in 318 IAC 1-5-1 for qualified inspectors. *(Department of Environmental Management; 318 IAC 1-2-17)*

Rule 3. Responsibilities of the Owner of Contaminated Property

318 IAC 1-3-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 6-1.1-25-4.1; IC 9-22; IC 13-14-8-8; IC 16-19-3; IC 16-20-1; IC 16-41-20

Sec. 1. (a) This rule applies to the owner of any of the following properties that meet the definition of a contaminated property:

(1) Single or multiple family residences.

(2) Hotels or motels.

(3) Businesses.

(4) Vehicles.

(5) Rental storage units.

(6) Outbuildings that are accessible to children.

- (7) Buildings used for storage that are accessible to children.
- (8) Any other property that contains equipment and containers of chemicals used for illegal manufacture of a controlled substance.

(b) This rule does not apply to any of the following if all equipment and containers of chemicals used for illegal manufacture of a controlled substance have been removed:

- (1) Outbuildings that are not accessible to children.
- (2) Buildings used for storage that are not accessible to children.
- (3) Waste collection containers.
- (4) Open land where no structure is contaminated.

(Department of Environmental Management; 318 IAC 1-3-1)

318 IAC 1-3-2 Cleanup required

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 6-1.1-25-4.1; IC 9-22; IC 13-14-8-8; IC 16-19-3; IC 16-20-1; IC 16-41-20

Sec. 2. If the initial assessment of the property shows that contamination may exceed the final decontamination levels listed in 318 IAC 1-5-2, Table 1, then the owner of the contaminated property shall clean up the contaminated property as required by this article before:

- (1) continuing to occupy or use the property;
- (2) reoccupying or reusing the property;
- (3) allowing the property to be reoccupied or reused; or
- (4) transferring any interest in the property to another person.

(Department of Environmental Management; 318 IAC 1-3-2)

318 IAC 1-3-3 Qualified inspector required for decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 3. The owner of contaminated property who has that property decontaminated shall retain a qualified inspector from the list of qualified inspectors to carry out all duties listed in 318 IAC 1-5-1.

(Department of Environmental Management; 318 IAC 1-3-3)

318 IAC 1-3-4 Contaminated property in the possession of a county

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 6-1.1-25-4.1; IC 13-14-1-15

Sec. 4. (a) A county may take possession of a contaminated property in accordance with IC 6-1.1-25-4.1 without complying with this rule, unless that property is, or will be, occupied while in the possession of the county.

(b) A county may transfer a contaminated property in accordance with IC 6-1.1-25-4.1 without complying with this rule if the county notifies the person who receives the tax deed to the property that the property is a contaminated property. The person who receives the tax deed to a contaminated property under IC 6-1.1-25-4.1 must comply with this rule. *(Department of Environmental Management; 318 IAC 1-3-4)*

318 IAC 1-3-5 Decontamination by the owner of the contaminated property

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 5. (a) The owner of a contaminated property shall not decontaminate property controlled by that person unless the decontamination is done under the supervision of a qualified inspector.

(b) The owner of a contaminated property shall not issue a certificate of decontamination under 318 IAC 1-5-9 for property owned or controlled by that person. *(Department of Environmental Management; 318 IAC 1-3-5)*

Rule 4. Listing by the Department as a Qualified Inspector

318 IAC 1-4-1 Who must be listed as a qualified inspector

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 1. (a) A person who performs any of the activities listed in 318 IAC 1-5-1 at a contaminated property must be listed on the qualified inspector list.

(b) A person who:

(1) is not a supervisor; and

(2) decontaminates a contaminated property under the supervision of a qualified inspector;

is not required to be listed on the qualified inspector list but must have received the training for general site workers required by 29 CFR 1910.120(e), revised as of July 1, 2005. 29 CFR 1910.120 is available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, (202) 783-3238. (*Department of Environmental Management; 318 IAC 1-4-1*)

318 IAC 1-4-2 Criteria for listing

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. (a) A person who applies to be listed as a qualified inspector must meet all of the criteria in this section.

(b) Each person who applies to be listed as a qualified inspector shall have accumulated at least forty (40) hours of experience doing any of the following:

(1) Decontaminating contaminated properties.

(2) Emergency response operations, cleanup or remediation operations, corrective actions, or operations involving hazardous wastes that are regulated under 29 CFR 1910.120, revised as of July 1, 2005.

(c) Each person who applies to be listed as a qualified inspector shall have received the training for supervisors required by 29 CFR 1910.120(e), revised as of July 1, 2005.

(d) Each person who applies to be listed as a qualified inspector shall have done all of the following:

(1) Received training on decontamination and inspection of contaminated property provided by the department.

(2) Passed an examination on the subject matter of the training provided by the department with a score of at least eighty percent (80%).

(e) To remain on the qualified inspector list, each qualified inspector shall receive all of the following refresher training:

(1) Eight (8) hour annual refresher training that meets the requirements of 29 CFR 1910.120(e)(8), revised as of July 1, 2005.

(2) Biennial refresher training provided by the department.

(f) Each qualified inspector shall maintain the following insurance:

(1) Professional liability insurance in the amount of at least one million dollars (\$1,000,000).

(2) Errors and omissions insurance in the amount of at least one million dollars (\$1,000,000) per occurrence.

(g) A person who decontaminates property under this article shall maintain pollution prevention insurance in the amount of at least three million dollars (\$3,000,000). (*Department of Environmental Management; 318 IAC 1-4-2*)

318 IAC 1-4-3 Application to be listed on the qualified inspector list

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 3. (a) A person who wishes to be listed on the qualified inspector list must apply to the department in writing. The application may be in any form but must include all of the following information:

(1) Full name, address, telephone, and electronic mail contact information.

(2) Copies of documents showing the applicant meets all applicable criteria in this rule.

(3) Complete information showing how the person should be described on the qualified inspector list.

(b) Mail or deliver the application to the Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251. *(Department of Environmental Management; 318 IAC 1-4-3)*

318 IAC 1-4-4 Qualified inspector list

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 4. (a) The department will maintain a current list of all persons who have been found by the department to be qualified to inspect and clean contaminated properties.

(b) The purpose of the qualified inspector list is to allow owners of contaminated properties, local health departments, and other persons to:

- (1) locate qualified inspectors; and
- (2) verify that a person is qualified to inspect and clean contaminated properties.

(c) Listing of a person on the qualified inspector list does not convey a property right.

(d) The qualified inspector list will be available to the public as follows:

- (1) In person or by mail at Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.
- (2) By telephone at (317) 232-4535 or toll-free at (800) 451-6027 in Indiana.
- (3) Electronically on the department's Web site at <http://www.in.gov/idem/land/>.

(e) The department will review each application for completeness. When the person or persons identified in the application have demonstrated that all criteria of this rule have been met, the department will place that person or persons on the qualified inspector list.

(f) The department will remove a person from the qualified inspector list who submits a written request for removal from the list to the address in section 3(b) of this rule.

(g) The department may remove a person from the qualified inspector list if the person demonstrates a failure to meet the requirements of this article.

(h) The department may return a person to the qualified inspector list when the condition that caused the department to remove that person from the list has been corrected. *(Department of Environmental Management; 318 IAC 1-4-4)*

318 IAC 1-4-5 Decontamination by a person not listed on the qualified inspector list prohibited

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 5. (a) A person who is not listed by the department on the qualified inspector list shall not:

- (1) supervise decontamination of a contaminated property;
- (2) inspect a contaminated property;
- (3) issue a certificate of decontamination; or
- (4) advertise to decontaminate contaminated properties.

(b) A certificate of decontamination issued by a person who is not listed by the department on the qualified inspector list is not valid to certify decontamination of a contaminated property. *(Department of Environmental Management; 318 IAC 1-4-5)*

Rule 5. Inspection and Decontamination of Contaminated Property

318 IAC 1-5-1 Duties of a qualified inspector

Authority: IC 4-22-2; IC 5-2-15; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 1. A qualified inspector shall do all of the following:

- (1) Review the Indiana State Police Methamphetamine Laboratory Occurrence Report prepared by the law enforcement agency under IC 5-2-15 relevant to that property.**
- (2) Consult with the law enforcement agency that terminated the laboratory and the local health department to determine the types of contamination that may reasonably be expected to be present.**
- (3) Conduct an initial assessment of the contaminated property to determine the following:**

(A) The types and levels of contamination present, including contamination in the septic system or sewage disposal system.

(B) The scope and extent of the decontamination, if any, that will be required to achieve the final decontamination levels listed in Table 1 of section 2 of this rule.

This assessment must cover the entire contaminated property and areas outside a structure that may have been used for disposal of chemicals used in the illegal manufacture of a controlled substance.

- (4) Notify both of the following in writing that decontamination will be conducted at that location and the date that decontamination will begin:**

(A) The local health department.

(B) Indiana State Department of Health, Office of Primary Care, 2 North Meridian Street, Section 3A, Indianapolis, IN 46204.

- (5) Supervise decontamination of the property, including the septic system and sewage disposal system.**

- (6) Notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance, including a warning about the hazards that may be expected when cleaning the septic system.**

- (7) Follow the procedure in section 3 of this rule if contamination is found outside the structure.**

- (8) Inspect the contaminated property in accordance with this rule:**

(A) when decontamination is complete; or

(B) if the initial assessment required by subdivision (3) shows that decontamination is not required;

to determine that the levels of contamination are below the levels listed in Table 1 of section 2 of this rule.

- (9) When the levels of contamination have been determined to be below the levels listed in Table 1 of section 2 of this rule, certify in accordance with section 9 of this rule that:**

(A) the property has been decontaminated; and

(B) the levels of chemicals used in the illegal manufacture of a controlled substance that were found at the property are below the decontamination levels listed in Table 1 of section 2 of this rule.

- (10) Comply with 29 CFR 1910.120, revised as of July 1, 2005, during all decontamination operations.**

- (11) Dispose or arrange for disposal of wastes resulting from decontamination in accordance with the following:**

(A) 329 IAC 3.1 for wastes that are hazardous wastes as defined in 40 CFR 261.3, as incorporated by reference in 329 IAC 3.1-6-1.

(B) 327 IAC 7.1 for wastewater from a septic system.

(C) 329 IAC 10 for all other wastes resulting from decontamination.

(Department of Environmental Management; 318 IAC 1-5-1)

318 IAC 1-5-2 Inspection of contaminated property following decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. (a) Before issuing a certificate of decontamination, the qualified inspector shall inspect the contaminated property for the chemicals listed in Table 1 that are determined to be present during the review of law enforcement reports and assessment required by section 1(1) through 1(3) of this rule.

(b) The qualified inspector shall use the sampling procedures in this rule.

(c) Analysis for the contaminants listed in Table 1 must use:

- (1) Method 8270C, "Semivolatile Organic Compounds by Gas Chromatography/Mass Spectroscopy", (Method 8270C), from "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", U.S. Environmental Protection Agency Publication SW-846, Third Edition (November 1986), as amended by Updates I, II, IIA, IIB, III, IIIA, and IIIB (SW-846), available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh,**

Pennsylvania 15250-7954, (202) 783-3238; or
(2) an equivalent method acceptable to the commissioner.

(d) The qualified inspector shall determine if the levels of chemicals listed in Table 1 are equal to or lower than the decontamination levels in Table 1.

Table 1.

Chemical	Final Decontamination Level
Methamphetamine	0.1 µg/100 cm ²
Ephedrine	0.1 µg/100 cm ²
Pseudoephedrine	0.1 µg/100 cm ²
Lysergic acid diethylamide (LSD)	0.1 µg/100 cm ²
3,4-methylenedioxy-methamphetamine (MDMA) (Ecstasy)	0.1 µg/100 cm ²
Phencyclidine (PCP)	0.1 µg/100 cm ²
Gamma hydroxybutyrate (GHB)	0.1 µg/100 cm ²

(e) All sample analysis must be conducted by an independent laboratory. (*Department of Environmental Management; 318 IAC 1-5-2*)

318 IAC 1-5-3 Contamination outside a contaminated structure

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 3. If the assessment required by section 1(3) of this rule indicates that contamination exists outside the contaminated structure, the qualified inspector shall:

- (1) remove all contaminated material, including soil;
- (2) dispose of all contaminated material and soil in accordance with 329 IAC 10; and
- (3) document removal in the certificate of decontamination issued under section 9 of this rule.

(*Department of Environmental Management; 318 IAC 1-5-3*)

318 IAC 1-5-4 Removal in lieu of decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 4. (a) Instead of having the property decontaminated to meet the decontamination levels in Table 1 of section 2 of this rule, the owner of the contaminated property may remove all potentially contaminated material from the interior of the structure or dwelling unit identified as a contaminated property.

(b) The owner of the contaminated property who removes contaminated materials in lieu of decontamination shall remove all of the following from the contaminated property:

- (1) All contents of the structure or dwelling unit and all personal property.
- (2) All plaster and lath, wallboard, and paneling covering all walls and ceilings.
- (3) All floor covering. However, the subflooring may be left in place and sealed if there is no visible contamination present.
- (4) All cabinets, shelves, and closet fixtures.
- (5) All interior doors, baseboards, and moldings.
- (6) All appliances.
- (7) All plumbing and electrical fixtures except as provided in subsection (c).
- (8) Window air conditioners.
- (9) Any remaining equipment or materials used in or resulting from the illegal manufacture of a controlled substance.

(c) The following may remain in the structure or dwelling unit if they are thoroughly washed with solvent and then washed again with detergent and water:

- (1) Exterior window assemblies.
- (2) Exterior doors.
- (3) Plumbing and electrical systems and light fixtures that are not enclosed in walls and ceilings.
- (4) Recessed light fixtures.
- (5) Ceramic or porcelain plumbing fixtures.

(6) Heating, ventilating, and air conditioning appliances except window air conditioners.

(d) Heating, ventilating, and air conditioning ductwork may remain in the structure if:

(1) it has been decontaminated; and

(2) a qualified inspector has inspected the ductwork in accordance with this rule.

(e) Insulation in exterior walls may remain in place if it is covered with a vapor barrier.

(f) Plumbing and electrical systems enclosed in walls and ceilings may remain in place without cleaning.

(g) Inspection of rooms or spaces where removal was done is not required if the removal was done in accordance with this section.

(h) The qualified inspector shall document removal of contaminated material under this section in the certificate of decontamination. *(Department of Environmental Management; 318 IAC 1-5-4)*

318 IAC 1-5-5 Preparation for sampling

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-11-2-104; IC 13-14-1-15

Sec. 5. The qualified inspector shall ensure that all of the following have been removed from the contaminated property before sampling:

(1) Carpeting and other floor covering.

(2) Drapery.

(3) Furniture.

(4) Clothing.

(5) Paper and textiles.

(6) Food.

(7) Other household goods.

(8) Household hazardous waste as defined in IC 13-11-2-104.

(Department of Environmental Management; 318 IAC 1-5-5)

318 IAC 1-5-6 Number and location of required samples

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 6. (a) Each room and space in the contaminated property shall be sampled. Except as provided in subsection (g), the qualified inspector shall collect all of the samples required by this section in accordance with ASTM D 6661-01, "Standard Practice for Field Collection of Organic Compounds from Surfaces Using Wipe Sampling" (ASTM D 6661-01) or another equivalent method acceptable to the commissioner.

(b) In each room within the contaminated property, four (4) ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled from each of the following locations:

(1) One (1) ten (10) centimeter by ten (10) centimeter area from a location at or near the center of the floor.

(2) One (1) ten (10) centimeter by ten (10) centimeter area from a location at or near the center of the ceiling.

(3) One (1) ten (10) centimeter by ten (10) centimeter area from a location at or near the center of each of two (2) walls.

These four (4) wipes may be combined into one (1) sample for every room.

(c) In addition to the room samples required by subsection (b), if the contaminated property includes a kitchen, four (4) additional ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled from each of the following:

(1) Countertop

(2) Sink.

(3) Stovetop.

(4) Floor in front of the stovetop.

If the stove or cook top has been removed, a sample shall be collected from the vent hood or, if there is no vent hood, from a cabinet in the immediate vicinity of the stove or cook top. The four (4) wipes from the kitchen may be combined into one (1) kitchen sample. Wipes from newly replaced appliances shall not be included in the sample.

(d) In addition to the room samples required by subsection (b), if the contaminated property includes a bathroom, four (4) additional ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled from each of the following in each bathroom:

- (1) Countertop.
- (2) Sink.
- (3) Toilet.
- (4) Shower or bathtub.

The four (4) wipes from each bathroom may be combined into one (1) bathroom fixture sample for each bathroom. Wipes from newly replaced fixtures shall not be included in the sample.

(e) In addition to the room samples required by subsection (b), four (4) additional ten (10) centimeter by ten (10) centimeter areas, for a total of four hundred (400) square centimeters, shall be wipe sampled at four (4) different locations in the ventilation system. These four (4) wipes may be combined into one (1) sample.

(f) If the contaminated property contains any cleaned appliances, one (1) ten (10) centimeter by ten (10) centimeter area for a total of one hundred (100) square centimeters shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, up to four (4) wipes may be combined into one (1) appliance sample for a total of four hundred (400) square centimeters per sample.

(g) If highly textured, coarse, or porous materials, such as concrete, brick, cloth, wood, or textured ceiling paint, are present on ceilings, walls, or floors after decontamination, those surfaces shall be:

- (1) removed;
- (2) sampled using the vacuum sampling method in ASTM D 5756-02, "Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration" (ASTM D 5756-02) or another equivalent method acceptable to the commissioner; or
- (3) sampled by removing a one hundred (100) square centimeter sample and analyzing the sample in accordance with Method 8270C or another equivalent method acceptable to the commissioner.

(h) In addition to the samples required by subsections (b) through (g), all quality control samples required by ASTM D 6661-01, ASTM D 5756-02, Method 8270C, or an equivalent method acceptable to the commissioner shall be obtained.

(i) The qualified inspector shall preserve and handle all samples in accordance with Method 8270C or another equivalent method acceptable to the commissioner.

(j) ASTM methods are available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959. (*Department of Environmental Management; 318 IAC 1-5-6*)

318 IAC 1-5-7 Laboratory analytical procedures

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 7. The qualified inspector shall ensure that the laboratory that analyzes the samples uses Method 8270C, or another equivalent method acceptable to the commissioner, for all analysis. (*Department of Environmental Management; 318 IAC 1-5-7*)

318 IAC 1-5-8 Laboratory reports

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 8. The qualified inspector shall:

- (1) obtain from the analytical laboratory all reports and data required by:
 - (A) Method 8270C and SW-846, Chapter One; or
 - (B) the equivalent method used; and

(2) retain those reports as required by section 11 of this rule.

(Department of Environmental Management; 318 IAC 1-5-8)

318 IAC 1-5-9 Certificate of decontamination

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 9. (a) When the final decontamination levels listed in Table 1 of section 2 of this rule have been met, the qualified inspector shall certify in writing that decontamination has been completed and all applicable final decontamination levels have been met. The certification must be:

(1) on the form provided by the commissioner; and

(2) signed by the qualified inspector.

(b) Within five (5) days of receiving the reports and data from the analytical laboratory, the qualified inspector shall provide the following:

(1) The original certificate of decontamination to the owner of the contaminated property.

(2) A copy of the certificate of decontamination to all of the following:

(A) The local health department.

(B) The Indiana State Department of Health, Office of Primary Care, 2 North Meridian Street, Section 3A, Indianapolis, IN 46204.

(C) Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.

(Department of Environmental Management; 318 IAC 1-5-9)

318 IAC 1-5-10 Third party validation

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 10. Nothing in this article may be construed to prohibit independent third party validation of any records and analytical data relevant to the contaminated property. *(Department of Environmental Management; 318 IAC 1-5-10)*

318 IAC 1-5-11 Record retention

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 11. The person who signs the certificate of decontamination shall make the following records and documents relevant to decontaminations and inspections performed by that person available upon request to the owner of the contaminated property, the department, the local health department, and the state department of health for a period of at least five (5) years after the certificate of decontamination has been issued:

(1) A copy of the certificate of decontamination.

(2) All data and reports received from the laboratory that analyzes the post-decontamination samples relevant to the property.

(3) Copies of relevant laboratory records described in Chapter One of SW-846.

(Department of Environmental Management; 318 IAC 1-5-11)

Rule 6. Demolition

318 IAC 1-6-1 Applicability

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 1. A person who demolishes a contaminated property that is a structure or a dwelling unit shall comply with all requirements of this rule. *(Department of Environmental Management; 318 IAC 1-6-1)*

318 IAC 1-6-2 Duties of a demolition contractor

Authority: IC 4-22-2; IC 5-2-15; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 2. The demolition contractor shall do all of the following:

- (1) Review the Indiana State Police Methamphetamine Laboratory Occurrence Report prepared by the law enforcement agency under IC 5-2-15 for that property.
- (2) Perform a visual inspection of the contaminated property to identify safety and health hazards at the property that can affect the health of persons at or near the property.
- (3) Notify the local health department of the following:
 - (A) That demolition will be conducted at that location.
 - (B) The date that demolition will begin.
- (4) Remove the septic tank or ensure the septic tank has been emptied. Notify the person who pumps out the septic system that the property was used for illegal manufacture of a controlled substance.
- (5) Protect all persons at the contaminated property from hazards identified at that property, including respiratory protection if needed.
- (6) Dispose of all materials resulting from activities under this rule in accordance with 329 IAC 10.

(Department of Environmental Management; 318 IAC 1-6-2)

318 IAC 1-6-3 Notice that demolition has been completed

Authority: IC 4-22-2; IC 13-14-1-15; IC 35-48-4

Affected: IC 13-14-1-15

Sec. 3. Not more than five (5) days after completing demolition, the demolition contractor shall notify the following in writing that demolition has been completed:

- (1) The local health department.
- (2) The Indiana State Department of Health, Office of Primary Care, 2 North Meridian Street, Section 3A, Indianapolis, IN 46204.

(Department of Environmental Management; 318 IAC 1-6-3)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 27, 2006 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Department of Environmental Management will hold a public hearing on proposed new rules at 318 IAC concerning inspection and cleaning of properties contaminated with chemicals used in the illegal manufacture of a controlled substance.

The purpose of this hearing is to receive comments from the public prior to adoption of these rules by the department. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rules. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.

Additional information regarding this action may be obtained from Steve Mojonnier in the Rules, Planning and Outreach Section, Office of Land Quality, (317) 233-1655 or call (800) 451-6027 (in Indiana) and ask for extension 3-1655.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator

Indiana Department of Environmental Management

100 North Senate Avenue

P.O. Box 6015

Indianapolis, Indiana 46206-6015

or call (317) 233-0855 or (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333 (TDD). Please provide a minimum of 72 hours' notification.

IC 4-22-2-24(d)(3) Statement Concerning Requirements or Costs Not Expressly Required by Statute: All requirements and costs imposed by this rulemaking are required by IC 13-14-1-15. The requirements imposed under this rulemaking are the minimum necessary to effectively implement IC 13-14-1-15. This rulemaking provides alternatives that will allow regulated entities to select the appropriate and cost effective way to comply with the rule.

Copies of these rules are now on file at the Office of Land Quality, 100 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Thomas W. Easterly
Commissioner
Department of Environmental Management

TITLE 329 SOLID WASTE MANAGEMENT BOARD

IDEM'S SUGGESTED CHANGES TO THE PROPOSED RULE CONCERNING INSPECTION AND CLEANUP OF PROPERTIES CONTAMINATED BY CHEMICALS USED IN THE ILLEGAL MANUFACTURE OF A CONTROLLED SUBSTANCE AT 318 IAC 18

LSA Document #06-125

Revisions made by the Legislative Services Agency (LSA) under the Administrative Rules Drafting Manual (IC 4-22-8-4(a)(2)) and incorporated into the proposed rule as published in the Indiana Register (LSA Document #06-125, June 1, 2006, 29 IR 3071) have been made in the proposed rule considered for adoption by the department. Those LSA changes are NOT included in this list of suggested changes.

Page references are to the rule as published on June 1, 2006 in the Indiana Register.

Page 3074 **318 IAC 1-2-6(a)** *[See comment 89]*

Add new subdivisions (3) and (4) to read as follows:

(3) The property has been identified in the Methamphetamine Repository maintained by the Indiana Criminal Justice Institute.

(4) The property has been used for the illegal manufacture of a controlled substance.

Page 3075 **318 IAC 1-3-2** *[See comment 70]*

Amend the beginning of the section to read as follows: **Sec. 2. If the initial assessment of the contaminated property required by 318 IAC 1-5-1(3) shows that contamination may exceed the final decontamination levels...**

Page 3077 **318 IAC 1-5-1(4)** *[See comment 90]*

Delete “both” and insert “all,” and add a new clause (C) to read as follows:

(C) Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.

Page 3078 **318 IAC 1-5-2(d)** *[See comments 82 and 93]*

Amend Table 1 to read as follows:

Table 1.

Chemical	Final Decontamination Level
Methamphetamine	0.5 µg/100 cm²
Amphetamine	0.5 µg/100 cm²
Ephedrine	0.5 µg/100 cm²
Pseudoephedrine	0.5 µg/100 cm²
Methcathene	0.5 µg/100 cm²
Lysergic acid diethylamide (LSD)	0.5 µg/100 cm²
3,4-methylenedioxy-methamphetamine (MDMA) (Ecstasy)	0.5 µg/100 cm²
Phencyclidine (PCP)	0.5 µg/100 cm²
Gamma hydroxybutyrate (GHB)	0.5 µg/100 cm²

Page 3079 **318 IAC 1-5-4** *[See comments 85 and 91]*

Redesignate subsection (h) as subsection (j) and add new subsections (h) and (i) to read as follows:

(h) Materials removed under this section must not be sold or transferred

to another person.

(i) All materials removed under this section must be disposed of in accordance with 329 IAC 10 within seventy-two (72) hours of removal.

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318 IAC 1-6-2

[See comments 85 and 91]

Redesignate subsection (6) as subdivision (8) and add new subdivisions (6) and (7) to read as follows:

(6) Remove all soil that has been contaminated with chemicals used in the illegal manufacture of a controlled substance.

(7) Prevent salvaging of materials from the contaminated property or transfer of those materials to another person.

Amend newly designated subdivision (8) to read as follows:

(8) Dispose of all materials resulting from activities under this rule in accordance with 329 IAC 10 no more than seventy-two (72) hours after demolition is completed.

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318 IAC 1-6-3

[See comment 90]

Add a new subdivision (3) to read as follows:

(3) The Indiana Department of Environmental Management, Office of Land Quality, Remediation Services Branch, Room 1101, 100 North Senate Avenue, Indianapolis, Indiana 46204-2251.

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

New Rules at 318 IAC 1 Concerning the Inspection and Cleanup of Properties
Contaminated by Chemicals Used in the Illegal Manufacture of a Controlled Substance
LSA Document # 06-125

ESTIMATE OF ECONOMIC IMPACT

318 IAC 1-3: Property owners would be required to remediate their contaminated property before reoccupying or transferring the property using one of the following methods:

- Decontamination and post-decontamination testing.
- Removal of contaminated materials in lieu of decontamination.
- Demolition.

Number of contaminated properties in Indiana: Dwellings and other real property in Indiana are being contaminated with chemicals used in the illegal manufacture of controlled substances. This contamination presents a serious health threat to children and adults who will occupy these dwellings. The Drug Enforcement Administration (DEA) reported 880 drug laboratories seized by federal, state, and local law enforcement agencies in Indiana during 2005.¹ No estimate of seizures for 2006 and beyond exists, but Indiana law enforcement agencies have reported a reduction in the number of seizures due to the controls placed on sales of ephedrine and pseudoephedrine under Senate Enrolled Act 444 (P.L. 192-2005).

Based on 2005 drug lab seizure statistics from the DEA, the El Paso Information Center's National Clandestine Laboratory Seizure System² and Indiana housing statistics from the 2000 Census³, IDEM estimates the following distribution of illegal methamphetamine laboratories:

Family dwellings	356	(254 owner-occupied, 102 rented) . . .	(40.5%)
Vehicles	173		(19.6%)
Open air, no structure	149		(16.9%)
Outbuildings	117		(13.3%)
Apartments and condominiums . . .	39	(28 owner-occupied, 11 rented)	(4.4%)
Hotels and motels	18		(2.1%)
Businesses	14		(1.6%)
Storage lockers	11		(1.3%)
Waste containers ("dumpsters") . .	3		(0.3%)

Based on the total number of housing units and vehicles in Indiana, the occurrence rates for properties with illegal drug labs for which statistics are available are:

All housing units: $395 \text{ illegal labs} \div 2,532,391 \text{ total housing units} = 0.0156\%$ ³

All vehicles: $179 \text{ illegal labs} \div 6,062,859 \text{ registered vehicles} = 0.0029\%$ ⁴

In contrast the national rate for residential fires in 2000 was about 0.3279% nationwide.^{3, 5}

Number of properties to be remediated: The proposed rule would require the following to be remediated: single and multiple family residences, hotels and motels, businesses, rental storage units, outbuildings and buildings used for storage that are accessible to children, vehicles that will be sold or reused, and other properties where chemicals used for illegal drug manufacture have not been removed. We assumed that 100% of occupied buildings, 100% of storage lockers, 50% of outbuildings, 10% of vehicles, and 5% of open air properties would be remediated. Using these assumptions, we estimate that out of 880 contaminated properties, 521 (or 59%) would be required to be remediated under this rule. The rest would either not require remediation or, in the case of vehicles, would be scrapped.

Cost to decontaminate a contaminated property: One cleanup contractor estimated a cost of up to \$15,000 to properly decontaminate a dwelling contaminated with methamphetamine or another illegal controlled substance, with a median cost of about \$5,000. This figure is based on limited

experience in Indiana. We have heard anecdotal accounts of cleanup costs ranging from a few thousand dollars to \$70,000. The actual cost will vary widely based on the size and construction of the property, the value of the property, the amount of contamination present, and other factors. We have no way to estimate what percentage of property owners would choose decontamination to remediate their property.

The cost of post-decontamination testing is equally difficult to estimate. A typical 3-bedroom house would require about 12 samples, assuming 4 wipes from each room are combined in a single sample. The cost to prepare the structure for sampling, take the samples, prepare them and ship them to the laboratory is unknown at this time. One factor affecting the cost of analysis is the analytical method used. The proposed rule currently requires use of SW-846 Method 8270C. IDEM currently pays about \$204 per sample for analysis using Method 8270C, which includes complete laboratory reports including quality assurance and quality control data. The current rates charged to individual remediation contractors is not known. There is also no current information about the rates that contractors will charge for this sampling. The proposed rule will allow use of “equivalent methods acceptable to the department.” One method currently under development by the Centers for Disease Control, NIOSH 9106, will be specific for methamphetamine and promises to be considerably less expensive to run.

Cost to reconstruct a contaminated property: The proposed rule would allow a property owner to treat the remediation in the same manner as repair of fire damage by stripping the interior of a contaminated structure and rebuilding it to meet existing building codes. This option may be more cost-effective for some property owners, especially apartment owners who can do some or all of the work using their own employees. This option would not require post-decontamination testing.

One demolition and reconstruction contractor estimated the cost to strip out the interior of a dwelling unit to be between \$3-4 per square foot. That contractor estimated the cost to reconstruct a dwelling unit to bring the cost to about \$35-40 per square foot, depending on the amount of work and level of finish desired. That cost could be reduced if some or all of that work can be performed by the owner’s employees. As with decontamination, the actual cost is based on individual circumstances and we have no way to estimate the actual costs to property owners or how many property owners would choose removal and reconstruction to remediate their property.

Cost to demolish a contaminated property: The proposed rule would allow a property owner to demolish the structure without decontamination, and it is unknown how many property owners would exercise that option. This may be an attractive option for owners of low-value property where the cost of decontamination or construction exceeds the market value of the property as a cost-effective way to return a contaminated property to marketability. One contractor estimated the cost to demolish a 2,000-2,500 square foot dwelling to range from \$6,700 to \$10,000. This cost would be partially or wholly offset by the increased value of the cleared site. It is not possible to determine how many property owners would elect to demolish the contaminated property without decontamination, and what the economic effect of choosing that alternative would be.

Cost of adverse health effects: We estimate that there will be a significant economic impact to some residents from the adverse health effects of occupying a contaminated property. The current lack of a requirement to disclose to prospective renters or buyers that the property was an illegal drug lab may cause future occupants to be physically harmed without their knowledge.⁶ No studies of the health effects of living in a dwelling contaminated by methamphetamine or other illegal controlled were available during development of this rule. However it is intuitive that reducing or eliminating these contaminants in dwellings will prevent serious health consequences to future residents from contact with illegal drugs and chemicals used to manufacture illegal drugs. This prevention will produce tangible health and economic benefits to the adults and children who will occupy these structures. However, it is not possible at this time to quantify the economic benefit of reducing exposure of occupants to methamphetamine or other illegal controlled substances and the chemicals used to manufacture those illegal drugs.

Costs to owners of contaminated properties: The owner of a contaminated property that is leased or rented will potentially experience a loss of revenue from being unable to place a tenant in that building or unit until remediation is certified and an abatement order is lifted. That loss of revenue can be minimized by initiating and completing remediation as soon as possible, and by not allowing the dwelling unit to be occupied until it is remediated.

In addition, we expect the owner of a contaminated property who does not remove contamination resulting from an illegal drug lab to incur some degree of increased liability for adverse health effects to future residents from that contamination, especially if the future residents are not informed of the contamination. We expect the exemption from real estate disclosure laws in IC 32-21-6 for these properties to increase this potential liability. However, there is no way to quantify this potential liability at this time.

Increase in property values following remediation: We assume that a building that contained an illegal drug lab that was seized by a law enforcement agency, was placarded, has a local health department's abatement order issued for it, and is currently unoccupied or abandoned, to be essentially without value until some form of remediation has occurred. There is currently no methodology or information available to estimate the increased value of property that has been remediated under these proposed standards. There is also no way to determine if the remediation costs will be offset by the increased value of the properties. The purpose of this rule is to provide a mechanism for that remediation to restore the value of these properties.

Costs to adjacent property owners: A contaminated property reduces the property value and marketability of surrounding properties. No information is currently available on the adverse effect on surrounding property values of structures that have become abandoned or reduced in value by being used as illegal drug manufacturing operations. We expect the requirement to properly remediate these contaminated properties to reduce the number of abandoned and unsafe properties and have a tangible positive economic impact on the value and marketability of surrounding properties. However, it is not possible at this time to quantify the economic effect of reducing the number of contaminated properties on surrounding properties.

Revenues to remediation contractors: Remediation costs represent additional income to contractors who perform the remediation work. We expect the positive economic impact of these revenues to offset the economic costs of remediation required under this rule.

318 IAC 1-4: A person who supervises decontamination of property used for illegal manufacture of controlled substances would be required to be listed by IDEM on the list of persons who are qualified to inspect and clean properties that are contaminated with chemicals used in the illegal manufacture of a controlled substance. To be listed, a person must meet certain requirements for training and experience and perform certain duties.

Costs of training: Persons who apply for listing under this rule would be required to attend training specific to decontamination of property contaminated by chemicals used in the illegal manufacture of controlled substances. This training would be provided by IDEM with assistance from ISDH and ISP. This training would be provided as often as required to meet demand and could be provided at different locations, including the applicant's workplace. The cost of this element cannot be accurately estimated at this time but is expected to be limited to salaries and possible travel expenses of supervisors who must obtain certification under this rulemaking. The number of persons who would apply for listing under this rulemaking is unknown at this time. During the course of this rulemaking, we have been in contact with nine persons who have indicated an interest in this work.

To be listed by the department, a person would have to receive the training required by 29 CFR 1910.120(e), Hazardous Waste Operations and Emergency Response - Training. This training is required under the Occupational Safety and Health Act for emergency response operations for releases of hazardous substances and is a basic requirement for all persons who work in the hazardous waste and hazardous substance cleanup industries. This requirement is enforced by the Indiana

Occupational Safety and Health Division. Applicants for listing under this rule should have already received this training, since it is a basic requirement for employment to obtain the required experience. We are not including the cost of this training in this analysis since it is imposed under separate authority.

Costs due to lack of standards: There are currently no requirements or standards for persons who inspect and clean property that has been contaminated by chemicals used in the illegal manufacture of controlled substances. This lack of standards may result in property owners being unable to ensure that their properties will be properly decontaminated, and potential lessees or purchasers being unable to assure themselves that a property is safe to occupy. Providing a pool of persons who have demonstrated that they are qualified to inspect and decontaminate these contaminated properties will result in proper decontamination and assurance to property owners, occupants and purchasers that the properties have been cleaned and are suitable for reuse. Hiring unqualified contractors may also subject the property owner to increased liability for possible injuries to workers.

Impact of activities of other agencies: IDEM activities are not the only activities that will have an economic impact on the owner of a contaminated property. Each of these other actions will affect the economic impact of this rule.

Indiana State Police and local law enforcement agencies: Law enforcement agencies that terminate illegal laboratory operations do a number of things. They remove occupants of the property and may arrest them. They remove children endangered by the lab and place them in the custody of the Department of Child Services. They also dismantle the laboratory and remove and dispose of all equipment and chemicals used for illegal drug manufacture found in the building using a contractor on contract to the Drug Enforcement Administration. A prominent placard is placed on the building to indicate it has contained an illegal drug lab and warn the public that the building is unsafe to enter. The law enforcement agency notifies the local fire department and local health department in writing of the existence and details of the illegal drug lab⁷. That notice is a public record.

Local health department: When notified by the law enforcement agency, the local health department inspects the contaminated property and may issue an abatement order under their statutory authority (IC 16-20). The abatement order will require all occupants to vacate the building and will be lifted when the health department receives a copy of a valid certificate of decontamination issued under this rule. The abatement order will prohibit occupancy of the structure until it is lifted.

Department of Child Services: DCS has the statutory responsibility to care for children removed from and endangered by illegal drug labs under the Indiana Drug Endangered Children (DEC) Response Protocol.⁸ Under that protocol, these children cannot be returned to a dwelling unit that has not been certified to be decontaminated.

Summary: Because of the uncertainties described above and the inability to predict the choices property owners may make in the future, the economic impact of this rulemaking cannot be meaningfully quantified at this time.

Acknowledgment and request for comments and corrections: IDEM acknowledges the contribution of each source of information and thanks them for their assistance. We understand the uncertain nature of estimating economic impacts in this new area of regulation, and we request additional comment, information and insight into all aspects of the economic issues involved in this complex subject.

To ask questions, make comments or provide additional information please contact Steve Mojonnier at Indiana Department of Environmental Management, Office of Land Quality, 100 North Senate Avenue, Indianapolis, IN 46204-2251, (317) 233-1655, email: smojonnier@idem.IN.gov.

Footnotes:

¹ Drug Enforcement Administration Briefs and Backgrounds, Drugs and Drug Abuse, Indiana Fact

Sheet at <http://www.dea.gov/pubs/states/indiana.html>

² Report generated by EPIC's National Clandestine Laboratory Seizure System dated January 23, 2006 showing Indiana drug lab locations from 01/01/2005 - 12/31/2005, prepared for the Indiana State Police.

³ Woodward, Jeanne, and Damon, Bonnie, "Housing Characteristics: 2000," U.S. Census Bureau, C2KBR/01-13.

⁴ "Car and Truck Registrations for 2005," STATS Indiana (<http://www.stats.indiana.edu/>).

⁵ "Residential Structure Fires in 2000," U.S. Fire Administration, National Fire Data Center, June 2004

⁶ See IC 32-21-6, "Psychologically Affected Properties."

⁷ "Indiana State Police Methamphetamine Laboratory Occurrence Report," required by IC 5-2-15-3.

⁸ Indiana Drug Endangered Children (DEC) Response Protocol, Version 1, August 1, 2005.

Information Sources: Indiana State Department of Health, Indiana State Police (ISP), Indiana Occupational Safety and Health Division, El Paso Information Center (provided by ISP), Indiana Criminal Justice Institute, Fort Wayne-Allen County Department of Health, Hamilton County Health Department, Boone County Solid Waste Management District, EES Group, Inc, Delta Services, Inc., Indianapolis Wrecking Co., Inc., U.S. Drug Enforcement Administration, U.S. Census Bureau.

Attachments:

E-mail with attached data from Sgt. Lori Petro, Indiana State Police
IDEM analysis of EPIC data provided by the Indiana State Police

Category \ Page	1	2	3	4	5	6	7	8	9	10	11	12	Total	%
Family Dwelling	21	17	9	13	9	17	15	9	14	13	16	2	155	40.5
Apartment/Condominium	1	1	6	3	2	1	0	1	1	0	1	0	17	4.4
Hotel/Motel	1	0	2	2	1	0	0	0	0	1	1	0	8	2.1
Business	1	1	0	0	0	1	0	1	1	1	0	0	6	1.6
Open Air/No Structure	3	2	4	11	8	7	7	3	5	10	4	1	65	16.9
Outbuilding	1	5	5	2	7	3	4	7	3	6	5	3	51	13.3
Vehicle	7	8	7	4	9	7	8	11	6	3	4	1	75	19.6
Storage Locker	0	0	0	0	0	0	1	3	1	0	0	0	5	1.3
Dumpster	0	0	0	0	0	0	1	0	0	0	0	0	1	0.3
Total	35	34	33	35	36	36	36	35	31	34	31	7	383	100%

Family dwelling 40.5 %
 Vehicle 19.6
 Open air/no structure 16.9
 Outbuilding 13.3
 Apartment/condominium .. 4.4
 Hotel/motel 2.1
 Business 1.6
 Storage locker 1.3
 Dumpster 0.3
 Total 100.0%

**INDIANA ECONOMIC
DEVELOPMENT CORPORATION**

June 20, 2006

Steve Mojonnier
Office of Land Quality
Indiana Department of Environmental Management

Dear Mr. Mojonnier:

Pursuant to IC 4-22-2-28, the Indiana Economic Development Corporation ("IEDC") has reviewed the economic impact analysis associated with the proposed rule affecting 318 IAC 1 concerning the inspection and cleanup of properties contaminated by chemicals used in the illegal manufacture of a controlled substance. The proposed rule would require property owners to remediate their contaminated property before reoccupying or transferring the property using one of the following methods:

- Decontamination and post-decontamination testing;
- Removal of contaminated materials in lieu of decontamination; and
- Demolition.

The Indiana Department of Environmental Management ("IDEM") has attempted to estimate the number of properties that would be subject to the requirements of the rule and has determined that approximately 521 properties would be subject to the rule. The economic impact of the rule consists of the cost associated with decontamination, removal and reconstruction, and/or demolition of contaminated properties. The cost of complying with the rule would be borne by property owners and could vary significantly based on the nature and size of the property and the method selected to comply with the rule. A portion of the affected property owners may be small businesses who would incur economic costs as a result of the rule. The cost of complying with the rule would also be a source of revenue for contractors who provide decontamination services. It is likely that a portion of the contractors performing decontamination services would also be considered small businesses. The benefit realized by contractors may partially offset the overall economic impact borne by small businesses.

Although the cost of compliance with the rule is difficult to estimate based in part on the variability in the size and nature of the contaminated property, the rule does provide multiple alternatives for affected entities to comply with the rule. Affected entities may choose the most cost-effective method of compliance. Additionally, there are significant costs associated with allowing properties to continue to be contaminated. There are likely significant health costs to owners and neighbors of contaminated properties, as well as a loss of revenue due to inability to lease/rent a property based on its contamination. The rule provides multiple alternatives to reduce or eliminate these costs.

The IEDC does not object to the fiscal impact associated with the proposed rule. If you have any questions about the comments contained herein please contact me at 232-8962 or rasberry@iedc.in.gov.

Regards,

Ryan Asberry
Director – Research
Indiana Economic Development Corporation